

MONTANA CORRECTIONAL SYSTEM: STRESSORS AND CHALLENGES

A Report Prepared for the
Legislative Finance Committee

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PURPOSE

The purpose of this report is to provide the Legislative Finance Committee with information related to the Department of Corrections, prepare the legislature for issues that are likely to be considered during the coming legislative session, and provide the legislature with options to address fiscal and other challenges.

BACKGROUND

In a report dated February 24, 2010, the legislature was provided information about the preliminary budget outlook for the 2013 biennium. This report indicated that the level of services currently provided by state government is about 10 percent higher than can be supported by the current level of revenues. The primary driver creating this budget gap is falling revenues. Legislative staff does not anticipate that Montana will be able to “grow” out of this budget gap through growth in revenues and that substantial change in revenues or expenditures will be necessary to close this budget gap. The correctional system is among the three largest areas of state government spending. Increases in correctional populations, particularly in higher cost housing (security) segments, will be a factor in any discussion of the projected 2013 biennium budget gap.

SUMMARY OF KEY POINTS

This report contains four major sections including: 1) information about FY 2010 average daily population levels and budget status; 2) a summary of the 2013 biennium big picture; 3) a summary of cost containment options utilized by other states and Montana during times of budgetary pressure; and 4) information about male secure care capacity.

Key points included in the first section of the report include:

- Overall ADP for FY 2010 has declined slightly due to declines in low cost correctional population segments
- Male secure housing population, one of the most costly correctional segments, is increasing
- A national report shows that state prison populations decreased for the first time in many years and that continuation of this trend is uncertain
- The department anticipates FY 2010 expenditures will be within appropriation levels if carry forward funds are included in the appropriations

Key points included in the second section of the report include:

- The department’s preliminary 2013 projection estimates an overall ADP increase of about 3 percent per year
- Increases in higher cost incarceration options such as male secure care will increase financial pressures

Key points included in the third section of the report include:

- Many of the cost containment options being utilized by other states have already been implemented to varying degrees in Montana
- No easy solutions to decreasing correctional system costs have been identified

Key points included in the fourth section of the report include:

- Male secure care population is expected to exceed the available capacity within the near future
- Development of alternative housing for some subpopulations within the male secure care system may be one way to impact the available capacity

FY 2010 ADP AND BUDGET STATUS

To date, the level of population growth experienced by the department has been at or below estimates used to develop the 2011 biennium budget. Through the first three quarters of FY 2010 the total average daily population (ADP) has decreased slightly compared to FY 2009. Probation and parole caseloads have decreased

1.6 percent during this time period but the male secure care population has increased 2.3 percent during the same period.

A March 2010 report Prison Count 2010 issued by the PEW Center on the States found that during 2009 total state prison populations declined for the first time in 38 years but that individual state trends varied. The Montana specific data included in the PEW report shows that the prison population decreased by one from 3,607 on December 31, 2008 to 3,605 on January 1, 2010¹. The nation's total prison population increased during this period due to an increase in the number of inmates in federal prisons.² The decline in state prison populations is driven by multiple factors including: 1) a decline in admissions of individuals sent to prison for new crimes; 2) an increase in the number of individuals on probation or parole returned to prison; and 3) an increase in the number of inmates released from prison.³

This report concludes that it is too soon to determine if this decline in state prison population will be ongoing or is an isolated incident.⁴ However, the report also provides several reasons to suspect that the decline in state inmates could be the beginning of a pattern.⁵ Per the PEW report, the reasons this may be the beginning of a change in pattern include:

- Advances in supervision technology
- Advances in the science of behavior change
- Use of more accurate risk assessment tools
- Public support for prison alternatives
- Policymaker focus on cost-benefit analysis
- Budget pressures

The department currently estimates expenditures, including the impact of the spending reductions ordered by the Governor, will be about \$3.6 million greater than the FY 2010 appropriations. The department anticipates offsetting this overage by using a portion of the \$6.5 million available to it as carry forward. Use of \$3.6 million of carry forward funds in FY 2010 will leave the department with about \$3.0 million of carry forward funds available for use in the second year of the current biennium (FY 2011). The legislature was aware of the availability of carry forward appropriations (estimated at \$4.5 million) during the 2011 biennium budgeting process. The actual funds available as carry forward appropriations, \$6.5 million, exceed the unspecified reductions of \$5.4 million included by the legislature in the 2011 biennium budget for the department.

2013 PRELIMINARY ESTIMATES

For the purposes of the preliminary budget outlook report prepared by legislative staff and presented at the March LFC meeting, corrections populations overall were projected to increase by about 3.3 percent, adding \$24 million of expenditures to the 2013 biennium budget picture. This projection assumes the department will be able to maintain its goal of supervising about 80 percent of offenders in community supervision programs and 20 percent in secure care (prison) settings.

The department's most recent estimate for the 2013 biennium ADP projects an overall increase of about 3 percent per year. While the overall percentage increase included in the legislative staff and department estimates is similar, differences between the two estimates become evident when projections for components within the system are compared. The most significant differences between the rate of increase in legislative staff and department estimates occur in male secure care, female community placement alternatives, and probation and parole caseloads. The differences in male secure care and probation and parole become significant because:

¹ Only selected components of the Montana offender population are included in the PEW data.

² Prison Count 2010, March 2010, The PEW Center on the States, page 1

³ Ibid, page 3

⁴ Ibid, page 5

⁵ Ibid, page 6

- How fast the male secure population increases impacts when and to what degree the population will exceed the available capacity of existing facilities
- The variance in per day costs between male secure care and probation and parole is significant. Male secure care costs for FY 2008 ranged from \$70.25 to \$91.97 per day while probation and parole costs were about \$4.63 per day
- Probation and parole represents such a large percentage of the total that changes in this group impact the percentage change in the overall ADP

The agency's executive planning process (EPP) submission for the 2013 biennium budget includes a placeholder, without a dollar amount, for growth in population and beds. While it seems likely that the department will utilize the population estimate referenced in this report as the basis for determining the dollar amount of the EPP request for this purpose, the dollar amount was not yet determined at the time of this writing.

COST CONTAINMENT

This section of the report discusses cost containment efforts used by other states, their applicability to Montana, and other strategies that might be considered in an effort to reduce correctional populations or slow the rate of growth. Many of the concepts or variations of these concepts implemented by other states have been or are being used in Montana. Unfortunately, no single, easy to implement concept to materially contain costs in Montana's correctional system has been identified.

Given that correctional system costs are largely driven by the number of offenders to be housed and the type of security needed for various categories of offenders, cost containment efforts focus primarily on how many offenders are to be housed and where they are housed. Most cost containment strategies attempt to do one or more of the following:

- Slow or reduce the number of offenders entering the system
- Speed or increase the number of offenders leaving the system
- Reduce the average length of stay in the system
- Place more offenders in lower security options which are generally less costly than higher security settings

Due to the difficult economic times currently being experienced nationwide, many states have or are implementing strategies to reduce or control the cost of incarceration. Common strategies that states may implement to reduce correctional costs include:

- Early release of offenders including use of earned time or good time
- Diversion of offenders from incarceration through increased emphasis on treatment and programs to reduce recidivism
- Strategies to reduce the number of offenders on probation or parole subject to revocation and reincarceration
- Strategies to assist offenders to successfully prepare for and re-enter community life

Other cost containment strategies might include:

- Provider rate reductions
- Shortened lengths of stay

Earned Time, Good Time

According to a July 2009 National Conference of State Legislatures (NCSL) report⁶ at least 31 states use earned time incentives to reduce costs by accelerating the release of lower-risk inmates. Earned time is defined in this report to be a reduction in length of incarceration provided to inmates who complete education, vocational

⁶ Cutting Corrections Costs Earned Time Policies for State Prisoners, National Conference of State Legislatures (NCSL) July 2009, page 1

training, treatment, work programs, and other productive activities. It is thought that these programs help offenders succeed when they return to the community. The NCSL report indicates that states with earned time have seen recidivism rates either remain constant or drop.

Montana's prison system, including Montana Correctional Enterprises, offers a number of treatment, educational, and vocational programs as well as work opportunities. The range of programs and employment opportunities varies by facility and includes things such as college level educational courses; dog training; substance abuse treatment; sexual offender treatment; and employment opportunities in manufacturing enterprises, the dairy, on fire crews, etc. Currently, no specific credit toward sentence length is awarded inmates completing these programs but often the Montana Board of Pardons and Parole (BOPP) takes such participation under consideration as part of the parole decision making process.

Good time is defined in the NCSL report as different from earned time with good time being credit toward a sentence earned by inmates who follow prison rules. Montana's correctional history includes experience with the use of a good time allowance. Montana statutes providing for a good time allowance were repealed by the 1995 Legislature and effective January 31, 1997 a good time allowance was no longer available⁷. This legislation was requested by the department based upon the recommendations of the Governor's Advisory Council on Corrections and Criminal Justice Policy⁸. The changes to good time were considered and made in conjunction with truth in sentencing proposals.

Both conversations with agency staff and review of reports indicate that good time increased confusion about the actual prison time an offender would serve and that there was a desire to make the actual time to be served more apparent. Discussions with department and BOPP staff about their past experience with good time reveals other concerns about its use and a lack of support for the concept. Various officials indicated some of the difficulties with good time include:

- Impacts on inmate accountability and motivation for change
- In Montana eligibility for parole is after completing 25 percent of the sentence, while in other states offenders are not parole eligible until a greater portion of their sentence has been served
- Difficulty of administration
- Increased litigation related to the calculation and application of good time

One impact of either good time or earned time would be a reduction in the average length of stay (ALOS). Per the department the current ALOS for male secure care is 21.4 months and for female secure care is 11.7 months. This represents an overall average for those offenders released in the past five years. The actual length of stay for various offenders may vary greatly from this average. For example, sex offenders have an ALOS of 52 months, or more than double the overall average. Shortening the ALOS could increase the need for the various educational, training and treatment programs within the prison as well as the need for community based transitional or reentry services because the volume of offenders needing these services would increase and the timeframe of providing the services would decrease.

There is indication that the current system does reward offenders for good behavior through the use of increased privileges and through the processes and decisions of the BOPP. Therefore, it is not clear how much of an influence use of earned or good time credits would have on Montana's correctional population.

Diversion

Several reports reviewed by legislative staff on topics related to containment of correctional costs discuss implementation of diversion programs, particularly diversion of offenders to treatment programs, often substance abuse programs. Montana's ability to achieve significant savings through implementation of these types of options is probably limited due to the number of community based treatment options implemented in

⁷ Sec. 10, Ch. 372, L. 1995

⁸ Montana Legislature, Policies on Good Time and the Effects on Sentencing Practices: History and Survey Results, For the Correctional Standards and Oversight Committee, by Susan Barth Fox, Research Analyst, May 1998

the state during the past several years. Community based treatment options currently operated by the department include treatment for fourth time driving under the influence (DUI) offenders, substance abuse, and methamphetamine use. Additionally, the department operates a boot camp facility and has contracted assessment and sanction centers.

There are two factors that likely make Montana somewhat different from other states in creation of savings through the diversion of offenders to treatment and other options. First, Montana statutes provide that an offender may be committed to the Department of Corrections (commonly referred to as a DOC commit). This unique option allows the department (rather than the court) to determine the most appropriate placement for the individual. Since the early release that was undertaken in 2003⁹ the department in conjunction with its contractor converted the Missoula Regional Prison to the Missoula Assessment and Sanction Center (MASC) and has also opened an assessment and sanction center for women. One of the purposes of these programs is to determine the appropriate placement of offenders entering the system. Department staff indicate that since its inception 70 percent of the offenders placed in the MASC program have been diverted and not gone to prison. It also appears that Montana is entering a second phase in diversion of offenders when compared to other states. Those offenders more easily diverted from prison have been diverted and the system is now looking at offenders that have not been successful in alternative programs and are returning to the correctional system.

Future diversion efforts will likely need to be focused on:

- Efforts to successfully divert more difficult offenders that have not been successful in the alternative placements currently available
- Diversion from the correctional and criminal justice system at an earlier point in the process or at the misdemeanor level

Revocation

A component of rising prison populations is related to recidivism and revocation of probation or parole for offenders failing to comply with the accompanying requirements. Concerns with this issue led Montana to establish a revocation and sanction center. This facility might be viewed as a half-way house or stop prior to reincarceration with the department's goal being to intervene in offenders' non compliant behaviors and return them to community placement without a return to prison. This program is referred to as the Sanction Treatment Assessment Revocation and Transition (START) program. Since inception in December of 2005 through September of 2008, department statistics show that 73 percent (884) of the offenders subject to the program were returned to the community and the balance of 27 percent (324) did go to prison.

While the START program has achieved a great deal of success, supervision of inmates and avoiding probation and parole violations that result in revocation are areas that need ongoing attention and improvement. Since most offenders who return to prison do so within the first two to three years of release, more intensive supervision during this phase and less or no supervision once an offender has reintegrated into the community and demonstrated his ability to be a law abiding citizen might be a strategy to increase offender success and decrease recidivism and costs. Additionally, continual review of the reasons an offender is returned to prison may reveal changes to the conditions of release that would be desirable and reduce revocations.

Provider Rate Reductions

One strategy used to reduce costs within the correctional system is provider rate reductions. A large portion of the department's budget is expended to reimburse non state entities including county jails, regional prisons, private prison operators, prerelease centers, treatment service providers, and providers of other types of alternative residential housing for offenders. One way that these costs could be impacted would be to reduce the reimbursement rate specified in the contract for services with these providers. Given that the 2011 biennium budget for the department included about \$124 million of funding to support room and board payments to contractors a 1 percent reduction in provider rates equates to savings of about \$1.2 million for the biennium.

⁹ As part of budget reductions.

This strategy was used in a previous state fiscal downturn and suspension of provider rate increases approved by the 2009 Legislature was included in the spending reductions ordered by the Governor in conjunction with section 17-7-140, MCA. Factors that could impede provider rate reductions may include:

- Provisions included in department contracts with providers
- Potential impacts to the operations of contractors, many of which are nonprofit corporations
- Potential reductions in the services provided to offenders, which may impact offender success in returning to the community
- Statutory provisions (and associated administrative rules) that specify that regional prison rates must be based upon costs (53-30-507(3), MCA)

Reduced Length of Stay

Currently many of the treatment and community alternative programs funded by the department and operated by providers have specific lengths of stay that are expected. For example, the length of stay in a prerelease center is generally six months for an offender, the methamphetamine treatment component of the correctional system provides for a nine month stay in the treatment center followed by six months in a prerelease center or a total of 15 months, and the felony driving under the influence (DUI) program is a six month program. Because the department reimburses providers on a per diem basis reduction in the length of stay in these programs could reduce the cost per offender. Per diem rates for male offender programs vary between about \$53 per day (for county jails) to about \$130 per day (for treatment). Thus, the range of potential savings created by a 30 day reduction in the length of a program may be \$1,600 to \$3,900 per offender. Additionally a reduction in the length of various programs could increase the number of offenders receiving these services which might increase the number of offenders exiting the system and returning to the community. Factors to be considered prior to implementation of reductions in the length of various programming include:

- Whether or not the current program length of stay is based upon research or best practices for the specific program and type of offender
- Potential impacts on program effectiveness and offender recidivism
- Potential statutory changes to sentencing provisions such as those related to felony DUI offenses

System Stressors

This section of the report highlights some items that are creating stress within the male secure housing segment of the correctional system. The available system capacity (male secure) is reaching its limits and increasing alternative housing options for specialized subpopulations, such as sex offenders, may be one way to impact the available system capacity.

Male Secure Capacity

Montana has the operational capacity to house 2,328 male inmates in prison or secure settings.¹⁰ In addition to these beds the department's budget includes funding to utilize about 130 county jail beds for male inmates. Combined this provides a system capacity of 2,458. Legislative staff estimates of the male secure population project that the average daily population of offenders in this group will reach 2,464 in FY 2010, exceeding the operational capacity of the beds available to house offenders in prison. The need for additional prison capacity is driven by both the number offenders entering prison and the ability (or lack thereof) to move offenders out of prison to appropriate alternative settings.

¹⁰ The emergency capacity of Montana male secure facilities is 2,420.

Options that might be immediately available to the department in the event population exceeds capacity include:

- 1) Exceeding the operational capacity of the system, increasing the number of inmates per cell if not already implemented, using common areas or temporary housing such as trailers
- 2) Accessing additional county jail beds if possible (availability of additional county jail beds varies at any point in time)
- 3) Housing inmates in other states
- 4) Accelerating release of some inmates (conditional or early release)

These options are likely short-term solutions with associated risk. Risk associated with exceeding operational capacity at existing facilities include impacts on security and safety of inmates and staff and the potential for increased unrest and stress among both inmates and staff. Accessing county jail beds may not be feasible if counties do not wish to increase the number of state inmates housed or may be inappropriate for the housing of some inmates. Housing of inmates in other states carries the need for Montana correctional staff to adequately oversee and monitor the incarceration of offenders housed in a potentially distantly located facility, increased transportation costs, and increased distance between inmates and their families. Conditional or early release of some inmates may carry with it increased risk to communities and hamper the offender's ability to successfully transition from institutional life and reintegrate into a community.

Other solutions that are likely to take some time to develop include:

- Development of programs and facilities to house specific groups of inmates
- Construction of additional prison beds or facilities

This report discusses circumstances surrounding selected groups of offenders that might be served in alternative settings, which would potentially "free-up" prison beds for incoming offenders. However, programs and housing for these groups would need to be developed. Additionally, such a shift could reflect some level of policy change in how offenders are housed. The legislature may or may not find such policy changes desirable.

Sex Offenders

One area of department focus is the treatment and transition of those convicted of sexual offenses to community settings. For purposes of this report, "sexual offender" is utilized to define a category of offenders convicted of a broad range of offenses. While typically lumped into one group, researchers note that there is much disparity among the various offenses committed and that offender behavior and risk to reoffend varies¹¹.

Department statistics show that the percentage of the adult, male prison population comprised of sex offenders has risen from slightly less than 25 percent in January, 2007 to its current level of 27 percent. The increase in this subpopulation as a percentage of total offenders in male secure care given that these offenders have an average length of stay in prison of 52 months creates increased pressure within the correctional system for male secure housing.

In the past two budget cycles the department proposed the creation of additional sex offender treatment beds in the community. The 2009 Legislature did not approve funding for this proposal. The 2007 Legislature did provide funding that could have been used for this purpose but correctional populations did not rise at the level anticipated during the budgeting process and such a facility was not created. Additionally, only one potential provider responded to the department's request for proposals to develop such a facility. Given that this group is an increasing percentage of the male prison population and impacts the availability of male prison beds, changes impacting housing of these offenders could relieve some of the pressure for male secure facilities. Options for addressing the pressure created by this subpopulation of offenders include:

- Contracting for services or building additional prison facilities to house the increasing male inmate population

¹¹ A Report to the Montana Department of Corrections on the Establishment of a Minimum Security Sex Offender Treatment Facility, Center for Sex Offender Management, July, 2008.

- Contracting for services or building community based capacity to provide treatment services coupled with investments in efforts to improve and accelerate the transition of parole eligible offenders from prison to community settings
- Accelerating the release of inmates other than sexual offenders to maximize housing available for sex offenders within the existing prison capacity

Medical/Geriatric Offender

A population group currently housed within the prison system that periodically becomes the topic of discussion is those with geriatric and/or medical needs. This is a population subgroup that presents some unique challenges and transition to alternative settings may be desirable, but it is not a large group (estimated to be about 20) and any movement in this subpopulation is likely to have only marginal impact on the availability of prison beds.

Often times this population is discussed in the context of costs savings to corrections through the shift of costs to public medical and social services programs such as Medicaid and Medicare. However, savings or shifting of these costs for the bulk of this group in the near-term is unlikely because most will not meet Medicaid or Medicare program definitions of aged, blind, or disabled¹². For the purposes of this report, this group is discussed in the context of housing location rather than potential financial savings.

The executive budget for the 2011 biennium proposed the addition of beds to the prerelease center in Great Falls as a potential alternative for this subpopulation of offenders. The proposal presented to subcommittee was not discussed in great detail and development of all facets of the proposal was incomplete. The legislature opted to fund the department for a lower level of population than the department requested and did not adopt the proposal to fund additional beds for this subpopulation of offenders. Options that might be explored for alternative housing of this subpopulation include:

- Conversion of existing state buildings or wings of buildings for this purpose including the Nursing Care Center in Lewistown, Pine Hills in Miles City, or other state owned buildings
- Use of private nursing care facilities, most likely a secure unit (perhaps a unit originally designed for Alzheimer's patients)
- Development of the previously proposed additional beds/wing at the Great Falls prerelease center

Items that would need to be assessed as part of a proposal to house these inmates at a location other than prison include:

- Number of inmates with similar needs that would be appropriately housed within the option under consideration
- Building design, layout, and ability to meet both security needs and medical requirements
- Availability of qualified security and medical staff
- Cost analysis comparing the costs of housing in prison to housing in alternative settings including building and construction costs

Mental Health

For several biennia the legislature has regularly considered the provision and status of mental health services in the state including the mental health population that is incarcerated. While most discussion of incarcerated mentally ill individuals tends to focus on Montana State Prison and the male population there are also mentally ill individuals housed at the Montana Women's Prison. Institutions and communities often experience difficulties in meeting the needs of these individuals. It is currently estimated that about 30 percent of male and 65 percent of female inmates have mental health needs. The acuteness of these needs varies as does the individual's ability to function within the prison. MSP currently has a low security mental health unit consisting

¹² Federal welfare reform requires Medicaid coverage for all individuals under 133 percent of the federal poverty level (effective January 1, 2014). Thus, future transition of inmates to community settings and coverage of medical needs by the Medicaid program may be enhanced by federal health care reform.

of 8 beds and a high security unit consisting of 12 beds for a total of 20 beds devoted to inmates with mental health needs that cannot be met through housing in the general population.¹³

The 2009 biennium executive budget proposal for the Department of Public Health and Human Services (DPHHS) proposed development of a facility that would serve mentally ill inmates housed at the prisons as well as individuals from the forensic unit at Montana State Hospital. It was estimated that 120 beds would be developed with the individuals housed here being split equally between correctional inmates and DPHHS forensic patients. The legislature did not appropriate funding for the operation of this facility but did appropriate funding through the long range building program for building renovations. The proposed building renovations are on hold at this time. The options that might be explored for housing of this subpopulation of offenders would be the same as those previously mentioned in the section related to the subpopulation of offenders with medical/geriatric needs.

SUMMARY

Montana, like other states, continues to face challenges in the management of the correctional system. While the ADP of offenders supervised by the department has declined slightly in the past year, high cost segments of the population such as male secure care are growing. In some cases this growth is on the verge of exceeding the capacity currently available within the system. This growth in higher cost incarceration is occurring at time that is financially challenging for the state. Montana is further challenged because some of the most used options to control costs such as diversion to treatment and alternative programs have already been implemented within the state.

In order to impact correctional system costs and availability of male prison capacity in the 2013 biennium the LFC could consider:

- Requesting that the executive or a subcommittee of the LFC develop a proposal for changes that would result in earlier release of offenders such as:
 - Reductions in length of stay in treatment, alternative, and transitional programs such as prerelease, methamphetamine and DUI treatment programs
 - Use of concepts such as good time or earned time to reduce lengths of stay
 - Programs utilizing technology and other methods to increase the intensity of supervision for offenders during the first two to three years after release given that highest rates of offender recidivism and revocation occur within this time frame
- Reductions in provider rates with directions to staff to include this issue in the analysis of the 2013 biennium executive budget proposal
- Requesting that the executive or a subcommittee of the LFC develop a proposal for alternative housing of selected subpopulations of offenders such as sexual offenders, those with geriatric/medical needs, or those with mental health needs

Legislative staff will continue to review population growth trends and research options that would reduce or limit correctional system costs.

¹³ The master plan prepared for the department considered the combined need for mental health and medical bed space. The report indicates that a national average need for these types of beds in the prison system is two to three percent for each. Given Montana's prison capacity of 2,492 (male, female, and county jail hold) and application of the lower 2 percent national average for each type of bed, Montana should have about 50 beds for inmates with mental health needs and 50 beds for inmates with medical needs for offenders that cannot be housed with others.