



# MONTANA LEGISLATIVE BRANCH

## Legislative Fiscal Division

Room 110 Capitol Building \* P.O. Box 201711 \* Helena, MT 59620-1711 \* (406) 444-2986 \* FAX (406) 444-3036

Legislative Fiscal Analyst  
CLAYTON SCHENCK

DATE: February 22, 2006

TO: Legislative Finance Committee

FROM: Pat Gervais, Senior Fiscal Analyst

RE: Department of Corrections Budget Status and Long-Term Solutions

Attached for your information are two documents. The first document is a memo requesting that the Department of Corrections focus its presentation for the March Legislative Finance Committee (LFC) meeting on solutions to the issue of population growth. On behalf of the LFC, staff requested that the department focus on long-term and creative solutions that might be considered or undertaken to decrease the correctional population.

The second document attached is the response to the attached memo that was received from the Department of Corrections. Staff has not yet reviewed this information. However, the department response is provided to you at this time so that you may read it in advance and prepare for questions and discussion at the LFC meeting.

If you have questions regarding this memo or the attachments, please contact me via phone at 444-1795 or email at [pagervais@mt.gov](mailto:pagervais@mt.gov).



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Legislative Fiscal Analyst  
CLAYTON SCHENCK

DATE: January 20, 2006

TO: Director Slaughter  
Department of Corrections

FROM: Pat Gervais, Legislative Fiscal Analyst

RE: March Legislative Finance Committee Meeting

Historically, the Department of Corrections has had difficulty in containing expenditures within appropriations levels. The department received supplemental appropriations ranging from \$4 million to \$9 million per biennium for three of the past five biennia. These supplemental appropriations have generally been attributable to offender populations that exceed budget estimates.

Given historical shortfalls within the Corrections budget and the need to balance budgetary priorities within available funding, the Legislative Finance Committee (LFC) has requested that at the March LFC meeting the department focus its presentation on solutions to the issue of population growth, including long-term solutions and creative or "out of the box" initiatives that might be undertaken. The LFC would like the department presentation to provide detailed, specific responses to questions such as:

- What creative solutions, actions, statutory changes and/or sentencing changes should the legislature consider and what would be the potential impact? (Proposed solutions should be inclusive of the system rather than focusing only on items directly under the control of the Department of Corrections)
- If you had to change statutes or implement programs at the local level to reduce entry into the correctional system by 100, 200, or 500 offenders, what would you recommend?
- What changes would you recommend to reduce the number of mentally ill or drug addicted individuals in secure care?
- What changes would you recommend to reduce the number on probation and recidivism rates?
- What changes should be made to increase the effectiveness of programs, particularly drug treatment programs, and improve the transition and success of offenders returning to communities?

It would be best if you could provide a written copy of your presentation to the Legislative Fiscal Division by February 22, 2006 so that it may be mailed to the committee for review prior to the meeting. Should you have questions regarding the request outlined in this memo, please contact Pat Gervais at 444-1795 or by email at [pagervais@mt.gov](mailto:pagervais@mt.gov).

C: Rhonda Schaffer, Fiscal Bureau Chief  
Bob Anez, Communications Director

DATE: February 22, 2006

TO: Pat Gervais, Legislative Fiscal Analyst

FROM: Director Slaughter, Department of Corrections

RE: Response to January 20, 2006 Memorandum  
Presentation to the Legislative Fiscal Division

Given the current offender population increases that have exceeded those contemplated in the Department of Corrections budget approved by the 2005 Legislature, I welcome this opportunity to discuss potential solutions to the fiscal dilemma by addressing the questions you posed.

First, I think it's important to note that the Department of Corrections is the end of the criminal justice pipeline. We have no control over the flow of offenders flowing into our system from the courts. Still, I recognize that this agency, filled with corrections professionals, is seen as valuable resource in looking for answers beyond our own doors. Judges, prosecutors, defense attorneys, drug counselors, public assistance officials, educators, behavioral therapists, and mental health professionals should have a similar voice in possible solutions.

Please note that many of the responses can apply to more than one question. For example, doing something to reduce the number of mentally ill in prison, as you address in question No. 3, also is applicable to your first question.

We have complied with your request to offer "out-of-the-box" ideas. However, it is crucial that you understand that in so doing we are listing some notions that neither the department nor the Schweitzer administration are recommending.

*Rather, we list some relatively drastic ideas merely to illustrate the extent of change needed to have the kind of impact on the correctional system that you propose in your questions. These are seeds for discussion, food for thought.*

Our point is that, if you want to eliminate hundreds of offenders from the system, policymakers would have to consider some moves that could have extensive political and public safety ramifications and, therefore, should be approached with caution.

**To prevent any possible confusion, we have categorized responses to clarify which do not represent department recommendations.**

- 1) *What creative solutions, actions statutory changes and/or sentencing changes should the legislature consider and what would be the potential impact?*

Recommended:

- a) Implement drug courts in each judicial district for adult and juvenile offenders.
- b) Create more mental health courts for adult and juvenile offenders.

- c) Develop pre-trial services at the local level to provide intervention at the misdemeanor level
- d) Develop a small psychiatric unit for adolescents
- e) Change sentencing law for “guilty but mentally ill” offenders to keep a majority of them out of prison
- f) Provide added funding to counties for more prerelease center beds that keep offenders from moving forward in the system
- g) Create additional county-run re-entry services
- h) Change the law so that an unconditional discharge ends an offender’s sentence and eliminates the potential for revocation of the probationary sentence that would send the offender to prison.
- i) Change the law to prohibit the transfer of a youth aged 18 to adult court and adult supervision, if the youth only committed misdemeanor offenses as a juvenile
- j) Change laws to limit the use of consecutive prison sentences
- k) Change the definition of common scheme (bad checks, forgeries) to add a monetary amount above which the crime becomes a felony, which would reduce the number of offenders entering the corrections system
- l) Eliminate prison as sentencing option for nonviolent felonies. All offenders are sentenced to the Department of Corrections for determination of proper placement

Not Recommended (food for thought):

- a) Change the law on probation revocation to allow only revocation of remaining probation term (ending the never-ending sentence)

2) *If you had to change statutes or implement programs at the local level to reduce entry into the correctional system by 100, 200 or 500 offenders, what would you recommend?*

Recommended:

- a. Legislators would review and change current criminal statutes, reduce maximum possible penalties, create alternative sentencing options, and refuse to create new felonies or to increase punishment for existing crimes.
- b. Encourage and fund local and tribal government efforts to build and operate community corrections facilities. Offenders are sentenced directly to those facilities without entering the corrections system.

Not Recommended (food for thought):

- a.) Change current felony laws to require lesser sentences by:
  - Making criminal possession of dangerous drugs a misdemeanor
  - Requiring someone convicted of drug possession be sentenced to treatment not incarceration
  - Raising the \$1,000 threshold for felony theft
  - Treat all DUI’s as misdemeanors (transfer funding to the county level for treatment in a therapeutic model)

- 3) *What changes would you recommend to reduce the number of mentally ill or drug addicted individuals in secure care?*

Recommended:

Responses a, b, d and e under question No. 1 apply here.

- 4) *What changes would you recommend to reduce the number on probation and recidivism rates?*

Recommended:

a. Reduce revocation cases by:

- Contracting with more employment/substance abuse counselors
- Encouraging more inpatient chemical dependency services
- Supporting and staffing mental health and drug courts
- Launching pilot project with an American Indian court worker
- Adding a START (Sanction, Treatment, Assessment, Revocation and Transition) center for females (EPP request)
- Creating community work program housing unit (EPP request)
- Expanding the intensive supervision and transition living programs that allow offenders to remain in communities and employed
- Increasing use of electronic monitoring

b. Assist adult offenders in re-entry by:

- Creating more prerelease center beds
- Adding parole/probation officers with mental health specialty
- Creating release coordinator positions for community placements
- Hiring more institutional parole/probation officers
- Adding more substance abuse beds (short term)
- Offering sex offender services such as a halfway-back program to include GPS monitoring
- Providing more inmate vocational-education and work programs

c. Increase community prevention/diversion efforts by allowing the state to reward local governments according to their success in using local programs to divert offenders from prison. The money, which would come from funds otherwise spent by the state on prisons, would be used by local governments for expanding their offender diversion programs in the community.

- 5) *What changes should be made to increase the effectiveness of programs, particularly drug treatment programs, and improve the transition and success of offenders returning to communities?*

Not Recommended (food for thought):

- a. The Department of Labor and Industry could pay three months of unemployment to parole/probation officer for benefit of discharged offender. Money could be used for rent, food, utilities to support the offender in the community until a job is secured.
- b. The Office of Public Instruction could launch an initiative to encourage provision of anger management, domestic and substance abuse classes in high schools.
- c. The Department of Revenue could study the effects of legalized gambling, comparing the economic impacts with the effects felt by the departments of Corrections and Public Health and Human Services.
- d. Explore distinguishing between different types of sex offenders (statutory, situational and predatory) in order change the stigma that affects sex offenders' placement in Montana communities. There are currently 100-120 offenders that have completed the appropriate programming but have no where to go because of community opposition to placement. This would include discussing the differences between the levels of sex offenders and the risk they pose to communities, possible creation of a diversion program as option to prison, and implementing step-down programs in communities.