

Montana LWV Criminal Justice Study

Criminal Justice Study Interview Process

A team of League members from all four Montana Leagues volunteered to work on the study: Beth Sirr, Marilyn Klein and Roxanne Klingensmith from Bozeman; Bonnie Lorenzen from Billings; Ronnie Whitiker, Pat Bic and Sue Hoell from Helena; and Deb Knight, Jennifer Copley, Jan Pavlock and Nancy Leifer from Missoula. In addition, Janet Young of Bozeman provided one interview. The study team reached out to over 60 individuals at all levels of the Criminal Justice System in Montana, including sheriffs, detention center commanders, county attorneys, inmates, judges, probation officers, public defenders, state legislators on the Interim Committee, providers of mental health services to offenders, emergency room mental health nurse, Department of Corrections administrators, Montana Innocence Project, Montana ACLU, and the warden of the Women's Prison in Billings.

The study team received 29 interviews, as follows: 8 interviews with law enforcement officials including one warden, many jail commanders, sheriffs and police officers; 5 interviews with public defenders at all levels; 4 interviews with county attorneys; 1 interview with 4 inmates; 3 interviews with state legislators; 2 interviews with providers of mental health services; 1 interview each with social worker, physical health care provider, and judge. We also did interviews with The Innocence Project, with the policy director of the Montana ACLU, and one interview who wished to have their role anonymous.

League Interview Research Results

A summary of the responses from the 29 interviews follows. Most interviewees agreed that substance abuse (especially methamphetamines), addiction and mental illness are the primary drivers behind the incarceration of the vast majority of those in prison. As several interviewees put it, we can't incarcerate our way out of these problems. Jailing victims of mental illness and substance abuse is not the answer.

Question: What are the major issues facing the criminal justice system in Montana?

Of the 29 interviews, 22 mentioned a mental illness or drug abuse concern as major issues facing the criminal justice system in Montana. In the area of mental illness, several interviews noted that jail had become the only option for many in mental health crisis, putting city and county jails at great risk, as they are not equipped to be mental health providers. Issues ranged from the lack of sufficient services for mental health assessment and treatment to the risk of suicide while in custody. Due to a lack of services, these problems are even more pressing in rural areas.

Drug abuse-related issues included the lack of treatment courts in many areas, combined with the concern that existing treatment courts were not operating as they

should, i.e., to divert people into treatment and if treatment succeeds, dismiss the case to avoid sending people to jail. DUI laws make it difficult for people to obtain treatment and prevent further DUIs.

Many interviews noted that the system criminalizes poverty by penalizing those who do not have resources. For example, bail is often set at an amount that the person cannot pay, resulting in weeks and even months spent in jail awaiting trial that disrupts the person's life, and this occurs before the person is found innocent or guilty. The amount of fines, fees and restitution owed by a person may commit them to a lifetime of debt that clouds their ability to rent a place to live, get a job, or even reinstate their driver's license once they are released. There is a disparity in how those who have their own attorneys are treated compared to those who do not. Most drug offenders and the mentally ill receive inadequate representation in court, as most cannot afford a lawyer and are dependent upon the overloaded public defenders for counsel. Self-representation is not a viable option, as codes are difficult to understand and judges give preferential treatment to those represented by lawyers.

Many interviews noted that the system is overcrowded. Signs of overcrowding include long delays in cases going to court and overloaded public defenders. This erodes constitutional rights of timely hearing and fair representation of clients. Overcrowding in the courts has resulted in minor drug cases being dismissed as part of triage in setting priorities for court time. As a result, some drug offenders know there are no penalties for these drug crimes, hence no deterrent to offending again. Understaffing at the crime lab results in delays of as much as 10 months in getting results of samples sent for testing. Overcrowded pre-release programs result in overtaxed caseworkers and parole officers who in turn provide limited supervision that translates into higher recidivism of clients. All of this has led to local governments to pick up more of the costs such as providing drug rehabilitation and mental health treatment and retaining prisoners at the county level because the state prison is also overcrowded. Local governments don't have the funding to support these costs.

Other interviews noted issues related to the way the law and the system are set up. Under the current system, a person cannot be forced to show up for hearings; however, failure to do so can result in being returned to prison. Attorneys may use the "trial tax" (if you lose you pay penalties) as leverage to get their clients to settle out of court. Recent years have seen additions to the conditions monitored in supervision, making supervision more complex. At the same time, there are often no penalties for refusing to comply with conditions for treatment or probation. Many of the parole and probation violations that do result in re-incarceration are for administrative failings, not for new crimes. Reforms are needed to ensure more uniformity in sentencing. The tool recommended for use in assessing risk of flight in the bail process is biased against minorities.

Question: What are the major reasons for people in Montana being incarcerated/recidivating?

Of the 29 interviews, 27 referred to drug abuse and mental illness related issues in their response to this question, noting that jails are the place of last resort for those with mental illness or addictions. As one interviewee stated, "the jails and prisons are filled with non-violent mental illness and addiction victims." Many noted the shortage of mental illness and addiction treatment services, especially in rural areas. Others noted the lack of effective treatment within the prison system, noting that incarceration does not make people better. There is a lack of resources to pay for these services, as well as a lack of understanding of these issues among the general public.

The second most mentioned reason for incarceration or recidivating was poverty. Those unable to afford bond may spend weeks or months in jail awaiting trial. Those released for treatment cannot afford the costs of treatment, and so are jailed for release violations. Those on probation or parole have difficulty finding employment, limiting their ability to pay past fines or restitution. Failure to pay can lead to further incarceration. Ex-cons are discriminated against in finding employment and housing and receive little support. DUI driver's license suspensions further limit potential employment opportunities when people can't drive a car to get to work. Without viable alternatives, people return to the lifestyle they had before incarceration and end up back in the system.

Requirements built into the system further ensure that people return to jail even though they have not committed a new crime. Administrative parole and probation violations such as missing a check-in or a court appointment can result in being sent back to jail. Parole officers are not seen as sources of support because they also have the power to send people back to jail. Records of crimes committed, as juveniles are not being removed from people's records, exposing youthful offenders to discrimination as adults.

Finally, overcrowding also contributes to longer and more frequent incarceration. Pre-release and probation supervision is understaffed and overworked, leading to less effective supervision and subsequently more violations. Overcrowding means some parole violations are not pursued, creating a situation in which ex-cons have no fear of repercussions and, therefore, license to return to their old ways. Limited case management resources ensure that more clients fail to complete pre-trial treatment and post release integration into society, increasing recidivism.

Question: What can be done, what is working?

When asked, "What can be done, what is working?" the 29 officials interviewed by the League of Women Voters called clearly for improvements in handling of the drug-addicted in Montana. Two officials reminded us that drug addiction and mental illness are not, themselves, crimes. Officials call for assessment and diversion programs before the addicted engage in criminal activities, attention to the nonviolent mentally ill and addicted when they face charges for criminal offenses, and support after those

convicted return to their communities. One Public Defender reminds us that we can't incarcerate our way out of the problem.

Seven officials called for specialized drug courts or treatment courts. Specialized courts allow collaboration of teams of professionals to assess the needs of a veteran or addict or mentally ill person, creating realistic plans of treatment and responsibilities. An equal number called for more drug treatment programs and facilities in rural areas. They want to add licensed addiction counselors, even in schools. A law enforcement administrator reminds us that we cannot ignore current addiction problems because we now harbor a generation of children raised by addicted parents.

Specialized courts like veterans' courts, Native American Treatment Courts, and the drug courts, allow teams of professionals to create programs that weigh the needs of those struggling with addiction and mental illness, often-concurrent problems. Those interviewed called for better pretrial risk assessment of the addicted and the mentally ill so that these populations could be diverted away from criminal courts. Officials called for increases in numbers of mental health counselors, mentioning needs of rural areas and schools, citing again and again, the lack of resources.

Once in the criminal system, the poor are most negatively impacted by bail. Four officials asked that courts use a risk assessment model to determine if bail is necessary or implement means testing to set bail levels. Others pointed out that Montana needs more judges to allow for the speedy trial promised by the Constitution. A few called for additional training of police and local judges and more consistency in sentencing.

Those interviewed often mentioned the view that support programs are as important for other offenders as for the mentally ill or addicted. They offered diverse suggestions to improve the prison/jail-to-community transitions: more parole/probation officers to provide assistance in finding jobs, housing and continuing treatment. Support systems, they remind us, are critical for success post treatment or during probation and parole.

Montana officials also noted how important it is to involve indigenous judges, staff, and consider Native customs in all mental health, addiction and criminal justice programs.

What model programs can we identify?

While serious challenges trouble the justice system in the Montana, the 29 officials interviewed by the League of Women Voters in the fall of 2019 cited many examples of programs that protect communities and prevent crime by providing services to the mentally ill, the addicted, and the convicted. Those identified in the interviews are listed below.

- **Connections Corrections Program** (meth treatment program at corrections facility in Butte)

- **Elk Horn Treatment Center** (correctional programs for women near Boulder)
- **Passages** (community-based correctional facility serving state and federal inmates in Butte)
- **Law Enforcement Assisted Diversion (LEAD) programs** (community-based programs which allow officials to divert low-level drug and prostitution offenders away from the criminal system and into community-based services)
- **Fresh Start Program** (reentry program for inmates at the Gallatin County Detention Center)
- **Gallatin County Pretrial Services** (program providing pretrial personal history, criminal history, and risk assessment to prosecution and defense)
- **Sequential Intercept Model** (guide used in several Montana jurisdictions to help divert the mentally ill from the criminal justice system or access needed assistance for them within the criminal justice system)
- **Programs for Assertive Community Treatment (PACT) Model** (professional community-based team approach to providing needed care for the mentally ill while diverting them from the criminal justice system; supervised by the Montana Department of Health and Human Services and implemented in communities like Billings)
- **Recover Center Missoula** (provides treatment for substance use disorders/addiction with co-occurring psychiatric disorders)
- **Alcoholics Anonymous (AA) and Narcotics Anonymous (NA)** 12-step programs for those struggling with addiction to alcohol or other substances)
- **Yellowstone Substance Abuse Connect** (Yellowstone County coalition of more than 80 nonprofits working to reduce violent crime)
- **Hope House** (Gallatin County Mental Health Center's facility to stabilize those in crisis)
- **Community Health Partners** (Gallatin County clinics striving to provide healthcare regardless of ability to pay)
- **Missouri River Drug Task Force** (multi-agency task force investigating and prosecuting drug trafficking in Gallatin, Lewis and Clark, Park, Meagher, Madison, Broadwater, and Sweet Grass counties)

What is not working?

The highest number of answers to this question related to the shortage of resources in the criminal justice system, 25 of the 45 responses. Insufficient financial support for the crime and forensic labs and for courts and judges create long delays in bringing cases to trial and to final sentencing. Lack of resources for public defenders dilutes the ability of the system to provide equal and fair justice for all. Pressure to cut costs means that cases that should be prosecuted are dismissed instead, leading offenders to believe there are no consequences for violating the law. Treatment within the prison system is minimal and ineffective in rehabilitating those who are incarcerated. Parole officers are also overloaded, resulting in less effective supervision. Case management and support services to help ex-offenders integrate into society are limited. There is a lack of affordable housing for ex-cons. Overcrowding in the state prison means we are shifting the state prison population to the local level through early release and not returning violators to state custody when they commit a new offense.

The costs of providing treatment and services pre-trial to divert individual with mental illness and substance abuse violation from entering the prison system are falling on local and county governments. Increasing fines is not the answer; we can't fund the system on the backs of those in the system. Many of the support costs for reintegration post-release also fall on local and county governments. However, local and county governments don't have the tax base to support these costs, especially at a level that would make these services effective in turning people's lives around.

Many other responses related to the larger issue of educating ourselves and society to change attitudes about the mental health and criminal justice system. We haven't identified and addressed the root causes of people offending; we can't keep doing the same thing and expect different outcomes. Nor can we continue acting like there is no problem. Prisons are designed to punish rather than help people reform. Our approach to criminal justice is mid-evil; we need to change how society sees prisoners. As noted in the interview with detainees, "We need to invest in saving the lives of all of those in the system; we can't just throw people away!" Arresting and jailing the homeless, mentally ill and addicted people is not working. The mental health system throughout the state is not working. Jailing those with mental illness is not the solution.

The legislature has ignored data on what actually works, and has failed to support the education, treatment and training programs needed to reduce the chance of offending. Non-lawyers serving as judges often do not follow the law and create inconsistent sentencing. Sentences given to men and women are unequal and unfair. The Department of Corrections list of sex and violent offenders includes those who have been exonerated. An Interim Committee of the Legislature is looking at the impact of this list on long-term rehabilitation of offenders and public safety.

Question: What do we need to start doing?

Improvements in Montana's criminal justice system may need to begin with public understanding that mental illness and addiction are public health problems requiring professional care. When the League of Women Voters members asked state officials, "What do we need to start doing?" officials insisted that Montana must divert the mentally ill and addicted from the criminal justice system through counseling, treatment programs, treatment courts, and support systems to transition the mentally ill and the addicted back into society after treatment. Strongly, officials interviewed insist that Montana has failed to provide adequate resources to support needed programs.

As jobs, alone, cannot end poverty, most people cannot overcome addiction without help. The highly unstable mentally ill may, at times, need guardians to make decisions for them. Too often, treatment options fail and the mentally ill or addicted end up in trouble with the law. They need adequately funded public defenders with manageable caseloads. They need treatment in jails and prisons.

Montana's shortage of resources limits adequate case management for those struggling to stay out of the criminal justice system, those in the criminal justice system, and those trying to normalize their lives in recovery or on parole.

Our policing officials, too, need resources. They deserve adequate salaries. They need training about critical response to those who are mentally ill or under the influence of intoxicants. Police need to be visible in our communities, not merely reactive. Police and sheriff's departments need to establish a culture of self-care for personnel trusted to maintain public safety.

The drug problem in Montana is serious, calling for continued involvement of law enforcement. Criminal activity, including violations of probation and parole, must be met with consequences. The public must learn, however, that diversion programs can be just and cost-effective.

If our criminal justice system is to change its focus "from tough to smart on crime," as one official suggests, Montana needs to gather data on the programs it implements, keeping careful records about effectiveness of its various programs, and making data-based decisions about programming.

As Montana must make legislative and legal decisions based on sound data analysis, it must also be willing to explore strategies tried in other states: alternatives to bail or incarceration, restorative justice, and mediation. Over the next decade, implementation of the Reinvestment in Justice legislation will provide an opportunity for Montana to both try new strategies and assess those strategies with responsible data collection and analysis.

What measures do we have to indicate success or failure, i.e., data and statistics?

Only 19 of the 29 interviews addressed this question. Several noted that the Department of Justice, Department of Corrections and the FBI have data that can be used to measure what is happening over time. Many noted the importance of tracking recidivism rates, noting that not all counties and cities track recidivism data, and the data that is tracked is not uniform and not integrated into state level data tracking. Others noted the need to track success rates of treatment courts. The 2017 Justice Reinvestment Report stressed the importance of using evidence-based evaluation of programs to ensure that service providers were achieving desired outcomes and not just going through the motions. Non-governmental treatment facilities track their own data. Unless programs track data and identify what is working and what is not, it is difficult to improve outcomes. The State Department of Corrections has an Offender Management Information System that allows access by authorized persons within the criminal justice system at the state and local level, as well as by contractors. One concern is that data collection not displace resources that could be going toward service provision and treatment.