

# LEGISLATIVE AUDIT DIVISION

Tori Hunthausen, Legislative Auditor  
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Deputy Legislative Auditors:  
Cindy Jorgenson  
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December 6, 2011

Senator Jim Shockley  
P.O. Box 608  
Victor, MT 59875-0608

Dear Senator Shockley:

You and several other legislators recently requested the Legislative Audit Division conduct a performance audit of the Department of Corrections oversight and contractual compliance of the Crossroads Correctional Center. Of particular concern were the facility's practices related to medical care, mental health, nutrition, hygiene, housing, use of segregation cells, and staffing. We conducted assessment work to address this request. The enclosed memorandum contains our recommendation that a performance audit is not warranted at this time.

If you would like further assistance, or have questions regarding the information provided, please do not hesitate to contact me at 444-3122.

Sincerely,

A handwritten signature in black ink, appearing to read "Tori Hunthausen".

Tori Hunthausen, CPA  
Legislative Auditor

## Enclosure

*S:\Admin\Performance\Corrections\Report\CCA Contract\rj-Shockley-CCA-contract-memo-cvr-ltr.docx\mh*

cc: Senator Greg Hinkle  
Senator Terry Murphy  
Senator Gary Branae  
Representative Margaret McDonald  
Representative Michael More  
Mike Ferriter, Director, Department of Corrections  
Bob Anez, Communications Director, Department of Corrections  
Sheri Scurr, Research Analyst, LSD  
David Niss, Staff Attorney, LSD

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## MEMORANDUM

**TO:** Tori Hunthausen, Legislative Auditor  
**FROM:** Ross Johnson, Performance Auditor  
**DATE:** December 2, 2011  
**RE:** Interim Request Related to Contract Oversight and Compliance with Contract for Crossroads Correctional Center

### Introduction

In September 2011 during a meeting of the Law and Justice Interim Committee, a member of the public voiced concerns about the conditions at Crossroads Correctional Center (CCC). Following this hearing, several members of the legislature asked the Legislative Audit Division to consider a performance audit of contract oversight and compliance at the facility. As directed by the request, our assessment work focused on two areas—oversight mechanisms related to contractor performance and the contractor's compliance with certain contract terms and conditions.

Operation of the facility is directly governed by a contract between Corrections Corporation of America and the state of Montana. Of special concern to the group of legislators who requested we initiate our audit process and members of the public were the contractor's practices related to:

- ▶ Housing units
- ▶ Food service
- ▶ Hobby, vocation and industry
- ▶ Recreation
- ▶ Access to legal services
- ▶ Medical care and mental health services
- ▶ Use of segregation cells
- ▶ Access to personal hygiene products
- ▶ Staffing

Through our work in these areas, we sought to determine if a performance audit of contract oversight and compliance is warranted. The results of our work are discussed below. Our conclusion is that conducting a performance audit is not currently warranted.

To address the request, we performed the following tasks:

- ▶ Visited CCC on two occasions, touring the facility each time
- ▶ Interviewed inmates at the facility
- ▶ Interviewed contractor's staff members, including facility managers, line staff members and contractor's Director of Food Service
- ▶ Interviewed Department of Corrections (department) staff members stationed at the facility and elsewhere, including Contract Placement Bureau staff and on-site Institutional Probation and Parole Officers
- ▶ Interviewed other stakeholders such as Board of Pardons and Parole staff, Deputy State Fire Marshal, and County Environmental Health Department
- ▶ Reviewed documentation related to the facility, including:
  - Safety and health inspections
  - Department licensing, audit and monitoring reports
  - Other outside accreditation information, including American Correctional Association (ACA) and National Commission on Correctional Health Care (NCCHC) accreditation status
- ▶ Reviewed the contract for the facility and relevant statutes, rules, department and CCC policies and procedures

### **Background**

The Department of Corrections uses a variety of facilities to provide for secure custody of male inmates, including Montana State Prison, two regional prisons and a private prison. The regional prisons are operated by county governments while the private prison is operated by a private corporation. The Montana Legislature approved legislation enabling private correctional facilities to operate in the state during the 1997 session. Title 53 Chapter 30 Part 6, MCA regulates the selection of a contractor, siting, and departmental oversight of such facilities.

The Corrections Corporation of America, the largest private corrections system in the nation, was awarded a contract and began operating CCC in Shelby in 1999. The contract between the state of Montana and Corrections Corporation of America provides that the contractor will be paid for managing and operating the facility on a per inmate per diem basis. The contract may be renewed in two year increments until August 31, 2019. At the end of this term the state will assume ownership of the facility and may operate it on its own or may select a contractor to continue its operation.

The Crossroads Correctional Center houses a maximum of 564 state inmates and, through a separate contract with the U.S. Marshal's Service, up to 96 federal inmates. State inmates may be classified at minimum, medium, or close custody levels. Inmates may be assigned to CCC for a variety of reasons as determined necessary by the Department of Corrections, including level of custody required, treatment availability, and medical and safety needs.

### **Oversight Mechanisms**

The Department of Corrections exercises primary oversight of the contract, including a full-time contract monitor on site at CCC who provides daily monitoring of contractor performance. The contract monitor has an office within the facility and is granted full access to the facility. In

addition to the daily presence of the contract monitor, other department employees also make regular visits to CCC.

### **Day-to-day Monitoring**

The department has developed guidelines to focus the day-to-day activities of the contract monitor. The guidelines advise the monitor that routine monitoring of inmate grievances, frequent walk-throughs of the facility, interviews with inmates, observations of unit operations, and constant dialogue with facility administrators are critical to identify potential problem areas. The contract monitor files monthly reports with the department related to the facility operations. We reviewed the reports from January 2011 to August 2011 and found consistent documentation of information for each month regarding security, staffing, disciplinary actions, inmate grievance reports, visitation, food service provisions, medical issues, prison policy review, inmate property issues, commissary sales, and offender contacts.

During our visits to the facility we noted the contract monitor was granted unfettered access to the facility. The monitor was able to escort us to any area of the facility we wished to observe. We also noted the monitor has developed a rapport with inmates, who were comfortable in sharing concerns. We observed the use of a thermometer and measuring cup to check the quantity and temperature of food and the monitor's access to contractor records such as staffing and vacancy reports to ensure required positions are filled each day.

### **Periodic Inspections**

In addition to the daily monitoring done by the department, other reviews are performed on a periodic basis. By law, the department is required to license a private correctional facility annually. We reviewed the licensing instrument from 2010 to verify this was completed. The department also conducts a biennial facility audit. We reviewed the CCC audit from 2009. This document is completed by a variety of department staff members who visit the facility and verify contractor performance. Our review of this document found that it was completed for over 30 areas of contractor operations, including staffing patterns, hygiene, and medical care. During previous audit work, we made a recommendation to the department related to strengthening the biennial audit process of contracted facilities. The department is in the process of implementing that recommendation and has scheduled the 2011 CCC audit and licensing for December 2011.

In addition to the oversight conducted by the department, there are other outside reviews of CCC operations. These vary from specific enforcement of state codes to broad compliance with national correctional facility standards. The table below provides a list of some of the audit, inspection and accreditation efforts that are completed for the facility:

<b>Type</b>	<b>Conducted by</b>	<b>Addresses</b>	<b>Frequency</b>
Fire and life safety inspection	State fire marshal	Fire and safety codes	Annual
Facility accreditation	American Correctional Association	National ACA standards	Triennial
Health services accreditation	National Commission on Correctional Health Care	Health Care standards	Triennial
Infirmery license	DPHHS	State infirmery codes	Triennial
Internal audit	Corrections Corporation of America Facility Support Center	ACA standards and internal policies and procedures	Annual
Food service inspection	Toole County Environmental Health Department	Sanitary conditions at facility	Annual

### **Contract Compliance in Selected Areas**

We also sought to determine if the contract monitoring tools in place appear to be effective. Because of specific concerns raised during public testimony to the Law and Justice Interim Committee and the subsequent request for an audit by a group of legislators, we selected several areas of CCC operation to consider. We found CCC appeared to be in compliance with the contract and we did not observe conditions that appeared to be inhumane or unsafe.

### **Housing Units**

The main inmate housing is contained in two pods. These pods are composed of a main central hall with seating, tables, phones, televisions and video games. There were numerous inmates in these areas during our visits. Inmate cells line the outside of these pods. Each cell can house two inmates and contains two bunks, two shelves, two seats, a sink and toilet. We visited a cell and observed that inmates were allowed personal effects and hygiene products. The central hall had large flat screen televisions to broadcast television programming and for video game machines. In speaking to inmates, they generally felt the cells were comfortable and larger than in other facilities. Total capacity of these housing units is 512.

### **S-dorm**

S-dorm is an area which houses inmates in a dorm-style setting. There is one large room with bunks and another room with seating, showers and toilets. The capacity of the room was 52 inmates though a recent inspection by the state fire marshal will reduce the capacity to 48. We received a daily population for this year to date through October 31, 2011. On one day the population was 50 inmates. All other days it was 48 or less. Department staff members report that it has revised the dorm's official capacity down to 48 inmates and will likely recommend the contractor remove two bunks from this area.

This section of the facility was not originally designed as a dorm, but rather as a gym. It was converted and is now used primarily when an inmate first arrives at CCC. One inmate approached us and indicated that he had been in S-Dorm about a week. He said the roof leaked and there were bugs. He pointed to the ceiling where he said it was leaking though we could not see evidence of a leak. He also pointed to what he said were bugs, but they were chips in the paint on one of the bunks.

We did review documents which indicated there had been a leak in the roof in early 2011. The leak was called to CCC's attention by the contract monitor and repairs were subsequently completed.

### **Food Service**

Food service operations are subcontracted to a large multinational institutional food service provider. The menu is designed and then approved by a licensed dietician. The dietician uses a specialized computer program to analyze the contents to ensure all diets conform to standards for calories and nutrition. The menu is reviewed once per year for possible changes. CCC does have some latitude to make substitutions when necessary, for example, if a certain supply is unavailable. The contract requires a minimum of 63 grams of protein and 2,900 calories for each inmate during a 24 hour period. The food service area must comply with state and local health regulations.

We toured both the food preparation and storage areas and the dining room. Dry goods were stored in a storage room behind the kitchen. Refrigerated and freezer storage areas were also

adjacent to the kitchen. Both the refrigerated and freezer storage areas included thermometers to monitor temperature.

The facility is inspected annually by the county health department and when we spoke to the county sanitarian it was described as “spotless.” Boxes were marked with the date of their arrival and had been rotated so that the first ones in would be used before more recent arrivals. There were boxes of canned beans and corn that were marked “emergency supplies.” We asked the food service director about these boxes and she indicated that they are kept on hand in case of an emergency such as a power outage. These supplies could be used to feed inmates under such adverse conditions.

We had an opportunity to eat a standard meal served at the facility. Inmate employees prepare and serve the food on trays in the kitchen. To reach the dining room, each tray is handed through a small window at counter height through which the servers cannot see. This prevents servers from knowing to whom each tray is distributed. We were served through the feeding window along with a group of inmates. The food was served at appropriate temperatures and everything appeared fresh. The salad greens in particular appeared to be very fresh. The main dish was bland but not distasteful.

While eating, the contract monitor demonstrated the use of a thermometer and measuring cup to measure food temperature and quantity. In addition to the standard menu option, special meals are also available for vegetarians, diabetics or inmates requiring low sodium meals, among other special needs. We observed trays with these options being prepared and served.

### **Hobby/Vocation/Industry**

Hobby and vocational activities are held in a separate building a short distance from the main prison. In the hobby area, quite a few inmates were engaged in leatherwork or braiding horsehair which are the two hobbies offered. The vocational area was not in use during our first visit as the staff member in charge of that area was on vacation. During our second visit, the hobby area was reported to be closed because the employee who normally runs that area was stationed in another part of the building.

CCC leadership indicated they would like to have additional industry opportunities but that it has been very difficult to identify a suitable industry, primarily because of private sector concerns about competition with prison labor. The contract requires the provision of a building for use by Montana Correctional Enterprise programs. The building is in place. One of the new assistant warden’s primary tasks will be to attempt to expand the vocational/industry programming.

### **Recreation**

Recreation time is scheduled for inmates on a daily basis. Indoor and outdoor recreation is available, though staffing levels allow only one type of recreation (in or out) to occur at a time. During both visits, inmates were engaged in indoor recreation and there were two staff members in the area. Inmates were playing basketball, handball, or working out on equipment. There appeared to be a wide variety of equipment available including weights, treadmills, bicycles, etc. We viewed the outdoor recreation area, which was not in use at the time of either of our visits. There was a gravel walking track, a volleyball court, an open area, and an outdoor handball court. The contract requires that recreation type and level meet ACA standards, which require one hour of indoor or outdoor recreation per inmate five days per week.

### **Access to Legal Services**

The prison library includes a computer that is loaded with Lexis-Nexis legal software. We viewed the computer and verified that it was operational. We met the librarian for the facility who also explained that legal materials may be obtained through inter-library loan including the state's legal library. There was a log book next to the computer detailing inmate usage of the system. There is also a printer available should an inmate need a printed legal form. This complies with the contract, which was modified in 2005 to require legal service access through Lexis-Nexis.

### **Medical Services and Mental Health**

The medical area features 24 hour nursing care and regularly scheduled physician and physician assistant care. A physician assistant was on duty during one of our visits. Cells are available for inmates who must be segregated from the general population due to an illness and there are exam rooms. Dental services are provided on site. The dentist was performing services during one of our visits.

There are two full time mental health specialists and psychiatry care is provided via telemedicine. While we were in this area, we had the opportunity to interact with one of the psychiatrists via the computer. The technology allows parties on both sides to clearly see and hear the other person. The facility formerly contracted with psychiatrists in Montana but these doctors were hard to find and often had to travel many hours to arrive in Shelby. Now, telemedicine allows doctors to more quickly respond to emergencies and eliminates the need to pay a doctor for time spent traveling.

During our interviews with inmates we asked for opinions of medical services. No one raised specific complaints. One inmate indicated he had to visit the medical area just the day before to treat a migraine and said that the treatment he received was excellent. We verified that the facility is accredited by the National Commission on Correctional Health Care and is licensed by the Department of Public Health and Human Services.

### **Use of Segregation Cells**

The segregation area is used to house inmates who cause problems in the general population. There is a separate ward for these inmates which can hold up to 48 prisoners in 24 cells. Staff indicated it is rare to put more than one inmate in each cell in this area. When we visited, there were 23 inmates in this area. These inmates are restricted to their cells for 23 hours per day. There is a separate recreation area for these inmates when they are allowed outdoors. When outdoors each inmate is restricted to a fenced enclosure but there is room enough to move around. We did not observe any inmates held in shackles while we were in this area. Staff indicated that inmates are shackled when they are moved from one area to another but not while they are in their cell. A white board in this area displayed the type of restraints that are applied to each inmate. At the time of our visit, all inmates were labeled "hands." We asked what other types of restraints may be used and staff reported that there are also leg restraints and a spit guard if an inmate has displayed a history of spitting on staff. We reviewed the file for one inmate who a member of the public indicated was held in isolation for an inordinately long period. The file indicated this inmate remained in segregation because he refused any other housing assignment. He has since been transferred to another facility.

### **Access to Personal Hygiene Products**

CCC has a standard warehouse where various necessary items are stored. Included here were inmate uniforms, towels, paper, toilet paper, and other products. Because public testimony indicated that inmates were not provided adequate toilet paper, we paid special attention to the

supply of this product. There was a large supply on hand at the time of our visit. We asked about the prison's policy for distributing toilet paper and CCC staff indicated that it is passed out twice per week but that if an inmate needs more he can request it at other times. The amount provided to any given inmate is limited because inmates can use it for purposes other than that which is intended, such as a wick used to start a fire or for stopping up toilets in order to cause a flood. During our interviews with inmates we asked if they had experienced any difficulty accessing personal hygiene products such as toothpaste or toilet paper and no one reported any problems in obtaining a necessary item.

### **Legislative Committee Action Items**

Though the conditions at the facility generally appeared to be in compliance with the contract, we did identify one area in which the department could play a more proactive role and another that has been referred for future LAD audit activity. The Law and Justice Interim Committee may wish to request follow-up action from the department.

### **Staffing**

The facility contract specifies staff deployment by shift and position. In sum, there are a total of 176.2 FTE listed in the contract. We obtained vacancy reports from the facility for two months in 2011. In May, there were 35 staff vacancies, including 29 correctional officer positions (two of these were part-time positions). In October, there were 32 correctional officer vacancies (two part-time). According to the contract, there are 70 total correctional officer positions.

During our second visit we were able to spend time with various staff members who indicated that low staffing levels are becoming a larger concern. For example, employees who have had security training in the past are often "posted" to security positions even if their current position is non security. During our second visit, we noted one employee was posted to the central command area instead of the usual position. Another employee who usually staffs the hobby area was stationed in recreation, meaning the hobby area was closed.

CCC leadership indicated that all required shifts have been filled through the use of overtime and the facility is constantly seeking new correctional officers through various recruiting efforts. Numerous interviewees indicated hiring correctional officers is a challenge for all facilities.

Adequate staffing is important to maintain safe conditions at the facility. Additionally, the use of excessive amounts of overtime may drive up the per diem costs of incarcerating inmates at this facility over the long term. According to department and CCC management, officials are aware of the current staff shortage and are taking steps to increase recruiting efforts. CCC management has brought in temporary employees from other facilities in the past and may do so again.

It did not appear that any required security positions were unfilled during our visits but some opportunities that are normally provided had to be curtailed due to low staff levels. Some employees reported difficulty completing their normal tasks due to being posted in other areas. Finally, numerous employees reported very low overall morale due to the need to work mandatory overtime, low wages, or other reasons.

The Department of Corrections possesses tools to monitor and enforce contractually-required staffing levels. The contract monitor observes staffing levels daily and can verify his observations against the daily staffing report generated by the facility. Staffing is also a regular part of annual department reviews of the facility. If the contractor fails to comply with required staffing levels the department may assess a financial penalty.



These controls should ensure the contractor maintains adequate facility staffing, so additional performance audit work is not needed at this time. However, the department should be sure to use its existing tools to maximum effect to ensure required staffing levels are met. The Law and Justice Interim Committee may wish to request a periodic update from the department related to its efforts to ensure CCC is adequately staffed.

### **Inmate Welfare Fund**

During our work, concerns were raised about the operation of the Inmate Welfare Fund. These funds are collected through fees assessed for inmate telephone calls, canteen purchases, and other sources. By statute, these funds are placed in a special revenue fund before being distributed to each prison in proportion to that facility's contribution. The funds are to be used for the "needs of the inmates and their families." Due to concerns about fund management, the department recently completed an assessment of CCC's management of its fund and issued five recommendations to improve its function. CCC is in the process of developing a corrective action plan related to these recommendations.

The Legislative Audit Division conducts a biennial audit of the department with the next audit beginning in early 2012. Compliance with inmate welfare fund statutes, rules, and policies has been referred to that audit. Results of the audit will be available through the Legislative Audit Committee.

### **Summary**

We did not note instances of noncompliance or inhumane conditions during our visits to CCC nor during our interviews with inmates and staff. Similarly, our review of various types of documentation did not reveal contractual noncompliance. The oversight mechanisms in place appeared to be comprehensive. Therefore, we recommend no further performance audit work at this time.