Bill: HB-2: General Appropriations Act 2021-01-25 09:00 AM - (H) JAS on Judicial Branch, Law Enforcement, and Justice
Position: Opponent
Representing an Entity/Another Person: Yes
Organization: #LetThemComeHome and incarcerated persons in MT
Name: Let Them Come Home
Email: Letthemcomehome@gmail.com
Phone: (406) 404-1742
City, State: Helena, MT
Written Statement: Governor Bullock's April 1, 2020 Executive Order related to state correctional and state-contracted correctional facilities, is attached. *Representative Fiona Neve inquired about this Executive Order to release inmates 01/20/2021.

Deputy Director Wolken communicated to the subcommittee that only the Board of Pardons and Parole holds the power to release inmates. However, in September Governor Bullock reitterated that his April 1st Executive Order was a directive to the Department of Corrections.

OFFICE OF THE GOVERNOR
STATE OF MONTANA

STEVE BULLOCK
GOVERNOR

MIKE COONEY
LT. GOVERNOR

TO: Montanans; all officers and agencies of the State of Montana
FROM: Governor Steve Bullock
DATE: April 1, 2020
RE: Directive implementing Executive Orders 2-2020 and 3-2020 related to state correctional and state-contracted correctional facilities

Executive Orders 2-2020 and 3-2020 declare that a state of emergency exists in Montana due to the global outbreak of COVID-19 Novel Coronavirus.

Section 10-3-104(2)(a), MCA, authorizes the Governor, during a state of emergency, to "suspend the provisions of any regulatory statute prescribing the procedures for conduct of state business or orders or rules of any state agency if the strict compliance with the provisions of any statute, order, or rule would in any way prevent, hinder, or delay necessary action in coping with the emergency or disaster." Further, it authorizes the Governor to "control ingress and egress to and from an incident or emergency or disaster area, the movement of persons within the area, and the occupancy of premises within the area." Section 10-3-104(2)(c), MCA. "[A]ll officers and agencies shall cooperate with and extend their services and facilities to the governor as the governor may request in the carrying out of the purposes of parts 1 through 4 of this chapter." Section 10-3-305, MCA.

Montana's public health laws also authorize the Department of Public Health and Human Services (DPHHS), acting under the Governor's direction, to "issue written orders for correction" of "conditions of public health importance," to "prevent and mitigate conditions of public health importance" through measures including "isolation and quarantine" and "abatement of public health nuisances." Section 50-1-202, MCA. DPHHS, under the Governor's direction, may also take action to correct public health deficiencies in "buildings or facilities where people congregate." Section 50-1-203, MCA. *See also*, § 50-1-204, MCA (isolation and quarantine measures authorized).

The Centers for Disease Control and Prevention (CDC) has issued an interim guidance for correctional and detention facilities.[1] While observing that it "may need to be adapted based on individual facilities' physical space, staffing, population, operations, and other resources and conditions," the interim guidance recommends, among other things, that correctional and detention facilities limit the transportation of inmates to and from facilities unless necessary; screen incoming inmates; practice hygiene, cleaning, disinfecting, and social distancing practices to the greatest extent possible; limit contact visitation; and modify programming to accommodate social distancing and limit crowding.

To curtail the spread of the COVID-19 pandemic in Montana, it is necessary to implement measures to prevent the spread of disease in correctional facilities. Such an approach will provide increased safety to inmates and staff during this pandemic. In consultation with public health experts, corrections professionals, and emergency management professionals, and consistent with CDC Interim Guidance on Management of Coronavirus Disease in Correctional and Detention Facilities, I have determined that to protect public health and human safety it is necessary for correctional facilities to implement

[1] *See* https://www.cdc.gov/coronavirus/2019-ncov/downloads/guidance-correctional-detention.pdf.

operational preparedness, prevention and management practices to address COVID-19, including restrictions on inmate movement. I also find that to the extent existing statutes and rules conflict with these objectives, strict compliance with those statutes and rules, as outlined below, would prevent, hinder, or delay necessary action in coping with the emergency.

Therefore, in accordance with the authority vested in me under the Constitution, Article VI, Sections 4 and 13, and the laws of the State of Montana, Title 10, Chapter 3 and Title 50, Chapter 1, MCA, and other applicable provisions of the Constitution and Montana law, I hereby direct the following measures be in place in the State of Montana effective immediately, except where otherwise specified:

I. Protocols to Protect State Inmate Population and Facilities Staff

- The Montana Department of Corrections (DOC) shall implement risk reduction protocols to address COVID-19 at its state-operated or state-contracted facilities, including the following:
    - Screening all persons arriving at a facility in a manner consistent with CDC guidelines.
    - Restricting all in-person visitations and continuing to provide, to the greatest extent possible, access to non-contact visitation methods. DOC shall continue offering one free video visit and one free phone call for each inmate per week for the duration of in-person visitation restrictions. DOC shall continue providing unmonitored call lines for legal communications and encouraging attorneys to limit in-person visits to essential visits only.
    - Restricting off-site appointments for incarcerated individuals to those necessary to address an inmate's urgent or serious medical needs.
    - Providing support to the Board of Pardons and Parole to consider early release for all of the following, but only so long as they do not pose a public safety risk and can have their medical and supervision needs adequately met in the community:
        - Inmates aged 65 or older;
        - Inmates with medical conditions that place them at high risk during this pandemic or who are otherwise medically frail;
        - Pregnant inmates; or
        - Inmates nearing their release date.
    - Temporarily suspending all transfers into the DOC's custody except as authorized herein.
        - All transfers into the DOC's custody under this Directive shall be quarantined for a period of 14 days on arrival into DOC custody.
        - Before an in-state transfer, a county jail or other originating facility may request that the Director of the DOC determine that the jail or originating facility has satisfactorily implemented risk reduction protocols as outlined above. If the Director determines that risk reduction protocols were satisfactorily implemented, transfers will resume in accordance with this Directive but are still subject to the 14-day quarantine requirement.
        - Counties will continue to be reimbursed under existing reimbursement rates and protocols for these inmates. The statutory requirement to maintain county jail holds at a monthly average of 250 or less is suspended for this purpose only.

        - Out-of-state transfers are only permitted on the express approval of the Director, are to be limited to the most pressing or severe cases, and must follow the 14-day quarantine requirement.
        - The Director may suspend all transfers into DOC custody if capacity limitations prevent the ability to quarantine transfers.

    - Urging local detention facilities to adopt appropriate screening and operational protocol as contained herein to prevent the introduction or spread of COVID-19 within their facilities and throughout the system.

    - Implementing protocols for incarcerated persons who display symptoms of COVID-19, including appropriate testing and isolation protocols. DOC shall continue to work closely with DPHHS on these protocols.

    - Providing, to the extent possible, appropriate personal protective equipment to staff as recommended by the CDC.

    - Conducting necessary cleaning and disinfecting of facility surface areas.

    - Ensuring access to personal hygiene products for incarcerated persons and correctional staff, including soap and water sufficient for regular handwashing. DOC will continue to educate staff and inmates on social distancing, handwashing, and personal hygiene.

    - Offering educational and other programming to the greatest extent possible, while practicing social distancing protocol.

    - Minimizing crowding, which may include scheduling additional mealtimes and recreational times, as staffing allows, to provide for increased social distancing.

- Nothing in this Directive shall abridge the rights of victims of crime to be notified of or participate in release decisions.

II. Protocols to Protect State Community Supervision Population and Supervising Staff

- The Montana Department of Corrections (DOC) shall implement risk reduction protocols to address COVID-19 risks to offenders on community supervision and the probation and parole officers who supervise them.

- Conditions of supervision remain in full effect and offenders are required to comply with those conditions.

    - To the greatest extent possible, DOC shall reduce in-person contact to only those instances where public safety requires it and conduct other routine contacts via telephone or other means.
    - Pre-Sentence Investigation interviews and risk and needs assessments shall be conducted telephonically.
    - Statutory restrictions on the use of supervision fees to facilitate the purchase of the necessary equipment to further enable remote supervision are suspended for the limited purpose of accomplishing this Directive.

- Where public safety requires physical contact with an individual on community supervision, DOC staff shall practice social distancing and hygiene, and use adequate PPE to the extent possible.

- It is imperative for public safety that those re-entering communities from facilities obtain appropriate, adequate housing during this time where supportive social services are limited. Therefore, any statutory restrictions, as promulgated in ARM 20.13.108, on rental voucher funds are hereby suspended so as to allow additional discretion for these funds to be utilized for any housing-related expense, to ensure adequate re-entry housing.

Authorities: Sections 10-3-103, -104, -302, and -305, MCA; §§ 50-1-103, -202, -203, and -204, MCA; Executive Orders 2-2020 and 3-2020; Montana Constitution, Art. VI, Sections 4 and 13; and all other applicable provisions of state and federal law.

Limitations

- This Directive is effective immediately and expires at the end of the declared state of emergency in Executive Orders 2-2020 and 3-2020, except where otherwise specified.
- This Directive shall be implemented consistent with applicable law and subject to the availability of appropriations.
- Nothing in this Directive shall be construed to limit, modify, or otherwise affect the authority granted by law to the Governor, DOC or the Board of Pardons and Parole, any other department, agency, officer, agent, or employee of the State of Montana, or any local or municipal government except as expressly provided in this Directive or other Directives now in effect implementing Executive Orders 2-2020 and 3-2020.
- This Directive is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the State of Montana, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

Bill: HB-2: General Appropriations Act 2021-01-26 08:00 AM - (H) JAS on Judicial Branch, Law Enforcement, and Justice
Position: Opponent
Representing an Entity/Another Person: Yes
Organization: Opening Doors
Name: Marcos Bullchild
Email: marcosbullchild2@gmail.com
Phone: (406) 217-3185
City, State: Great falls
Written Statement: On July 28, 2019. I was involved in one of the biggest cover-up in great falls. I worked at Boston's Pizza and sports bar as a pasta cook. Firefighter gl38 antifreeze was served in the pasta dishes that I was preparing. The chemical antifreeze covered my body from head to toe. Shawna Rothwell, mark Rothwell, robert kreppes, mario Bullchild, tom jarvis, co owner Lianne, on call fire fighter, kaci mitchell, Matt jarvis's secretly with heald the safety data sheet. Saying that the chemical was no toxic whatsoever you can swallow it, it touch it and do whatever with it. I helped to push it on the street and into the water drainage system. They extort individuals on probation and parole. We reached out to Wayne bynes director at probation and parole. He did nothing to help

From: LetThemComeHome LetThemComeHome <letthemcomehome@gmail.com>
Sent: Monday, January 25, 2021 1:41 AM
To: david.howard@mtleg.gov; emma.kc@mtleg.gov; fiona.nave@mtleg.gov; Simmons, Jacquie <Jacquie.Simmons@mt.gov>; jimmyformontana@gmail.com; Lynch, Ryan <lynchryan@gmail.com>; Lewandowski, Marci <Marci.Lewandowski@mt.gov>; ryanosmundson@gmail.com; wwmercer406@gmail.com
Subject: [EXTERNAL] For public comment: HB2 DOC/ BOPP Example of denial during pandemic

Hello. Attached is an example of a person who was denied for release from MSP during the Covid pandemic. This individual was 18 years old when the crime was committed in 2008. He became for eligible in 2016. The Prison has had him on a waiting list for a class that the BOPP required for release. He still on the waiting list today. The class is available in the community. However, the request for parole was denied for the reasons given in the attached letter.

This parole- eligible inmate has demonstrated good behavior consistently for the past 13 years. He is considered a moderate risk to reoffend. It is stated in the letter that he must complete the required course at MSP in order to be released. He's been on the waiting list for a very long time. At times throughout the pandemic, programming was shut down for everybody, which gridlocked the release situation even more while the virus took hold. This programming gridlock coincided with a BOPP gridlock.
Given the Governor's executive order to release people, the BOPP has demonstrated that they are not willing to flex on a person leaving custodial environment and taking the class in the community where it is indeed available. This is one example parole denial is attached for your review.

*Sidebar: Inmate Vern KillsOnTop literally died with Covid, waiting for a parole hearing that he WAS indeed eligible for. Why wasn't he released according to the executive order? MSP delayed medical intervention for Vern and the BOPP had lengthy (and suspiciously unnecessary) delays in seeing Vern for parole consideration.

Please note that the waiting list for Programming at Montana State Prison is very lengthy. Parole eligible inmates are being held up and the BOPP scores people on a waiting list higher because they haven't completed programming that the DSC has not given them access to. This is beyond the inmates control. Yet, the VOPP requires them to wait in custody for years until they get access to the class. Some classes are only available up in Shelby and would require a transfer. Either way it's a long time that Montana citizens are paying to incarcerate these individuals at the daily rate, just for a class that is indeed available in the community. We have argued this when VOPP recently made changes to the administrative rules that allow them to score individuals higher for this issue of people being held up due to no fault of their own.

Please review the attached Parole Denial letter and understand that we have been paying upwards of $40,000 a year for this single individual to wait around for the class to be offered at Montana State Prison. At that rate, this programming *must* be similar to a Harvard-rated course. Is taking this class that MSP offers such a life changer that it decreases the likelihood of recidivism by 90%?

We do wonder how a single programming course at MSP could justify such a significant time extension of incarceration time beyond parole eligibility.

I have also included an attachment about the recent ARM Rule changes that the BOPP approved through the Secretary of State's office, despite a lot of pushback from the public.

If the committee would like to see the reports and public comment offered against these administrative rule changes, written record is available through the Secretary of State's office. We included one written opponent example as an attachment. We have also included the final disposition on that approval.

BEFORE THE BOARD OF PARDONS AND PAROLE
OF THE STATE OF MONTANA

In the matter of the adoption of 20.25.507 pertaining to parole guidelines and the amendment of ARM 20.25.704 pertaining to conditional discharge from supervision	)))	NOTICE OF ADOPTION and AMENDMENT

TO: All Concerned Persons

1. On August 28, 2020, the Board of Pardons and Parole (Board) published MAR Notice No. 20-25-70 pertaining to the public hearing on the proposed adoption and amendment of the above-stated rules at page 1556 of the 2020 Montana Administrative Register, Issue Number 16. Thereafter, on September 11, 2020, the Board published MAR Notice No. 20-25-70 pertaining to the amended public hearing on the proposed adoption and amendment of the above-stated rules at page 1693 of the 2020 Montana Administrative Register, Issue Number 17

2. The Board has adopted and amended, respectively, the following rules as proposed: New Rule I 20.25.507 and ARM 20.25.704.

3. The Board has thoroughly considered the comments and testimony received. A summary of the comments and the Board's responses are as follows:

COMMENT # 1: A commenter stated that the zoom webinar hearing was deliberately confusing making it difficult to comment. The commenter also stated that for some, the parole guidelines set standards that are almost unattainable and set the offender up for failure. The example given was when an offender is granted parole upon completion of a reentry program but no program accepts the offender and so he remains in prison. The commenter also posed general questions and expressed general concerns on various other issues unrelated to the rule proposal notice.

RESPONSE # 1: The commenter had a full opportunity to present comments during the hearing. Following the hearing but before expiration of the comment period, the commenter also submitted comments in writing. Respectfully, the Board does not agree that the parole guidelines set unattainable standards. In the circumstance described an offender could, for example, request a reappearance under ARM 20.25.402 to present an alternative parole plan for the Board's consideration or to request that the Board amend the hearing disposition based on the circumstance described. The Board endeavors when necessary and appropriate, to administratively eliminate parole barriers in a manner that both protects the public and positions the offender for successful parole.

The Board is unable to respond herein to the commenter's other general comments and concerns that were unrelated to the rule proposal notice and outside the scope of the rule hearing. The commenter is encouraged to submit comments specifically related to the content of any rule proposal notice published by the Board.

COMMENT # 2: The commenter provided oral and written comments wherein he objected to the Board "flopping" an offender due to prison rule infractions (institutional misconduct) even when the offender has completed the sentencing court's recommended conditions for parole. The commenter concluded that such action renders the courts' orders subject to change by the Department.

The commenter also commented on various other matters unrelated to the rule proposal notice.

RESPONSE # 2: The legislature directed that the Board consider four factors, in decreasing order of importance, when making parole decisions. (46-23-218(3)(a), MCA). The four statutory factors are designated (2)(a) through (2)(d) in the proposed rule. Section (2)(c) is the "institutional behavior" factor and it is ranked third in importance. The Board cannot adopt a rule that conflicts with statute by, for example, disregarding institutional misconduct. The "order of importance" of the four statutory factors is carried over into the point system established by the Board in the proposed parole guidelines [NEW RULE I]. Institutional misconduct of a serious nature committed within 6 months of an offender's parole hearing, as described in (2)(c) of [NEW RULE I], is one indicator of a lack of readiness on the offender's part to succeed in the community on parole. (46-23-208(4)(c),(e),and (n), MCA). Parole is a privilege and not a right. It must be earned. A prison disciplinary appeal process is available to offenders who maintain that they did not commit a rule infraction for which they were found guilty in an institutional disciplinary proceeding.

The Board is unable to respond herein to the matters contained in the comment which are unrelated to the rule proposal notice. The commenter is encouraged to submit comments relating to the specific content any rule proposal notice published by the Board.

COMMENT # 3: The commenter submitted oral comments during the rule hearing and written comments after the hearing but before expiration of the comment period. The comments were as follows:

a. The MORRA and WRNA risk and needs assessment instruments are not validated for Montana. A Council of State Governments (CSG) report was submitted by the commenter in support of the statement. The report recommended that validation not occur until the accuracy of the assessment instruments are confirmed through quality assurance and continuous quality improvement programs with racial and gender breakdowns. The commenter stated that the below-specified cultural biases perceived to be inherent in the

MORRA and WRNA assessment instruments operate against Native American offenders in the Board's parole decision making. The commenter requested that the Board remove risk assessment from the parole guidelines rule and from consideration by the Board in making parole decisions. The commenter also addressed an issue pertaining to rates of revocation of parole and reincarceration. Additional comments pertained to matters unrelated to the rule proposal notice.

b. The commenter identified unemployment data gathered in the administration of the instruments as a source of cultural bias against Native Americans that formulaically result in minorities' scores on the assessment being elevated. The commenter provided documentation that the unemployment rate on rural Indian reservations is significantly higher than the unemployment rate in majority white communities not on the reservations.

c. The commenter also cited data pertaining to past incidences of domestic violence in households where offenders lived as another source of cultural bias that is embedded in the assessment instruments and negatively impacts Native American offenders' opportunity to be paroled. Such incidences are matters over which the offenders may not have had any control. For that reason, the commenter stated, such data pertaining to household domestic violence should not operate to disadvantage offenders again, later in life, in a parole decision making process.

d. Educational experiences were also cited by the commenter as a source of bias against Native American offenders embedded in the risk assessment instruments used by the Board. The commenter referred to a 2019 study by the ACLU entitled "Empty Desks" pertaining to indigenous students being disproportionately pushed out of the classroom and into the criminal justice system for adolescent behaviors that are not criminal in nature. The commenter concluded that the risk assessment inquiries into previous expulsions or suspensions from school, coupled with other life experiences referred to herein, negatively impact Native Americans offenders and elevates their MORRA and WRNA scores.

e. The commenter objects to the Board's consideration of the 4th statutory factor, i.e., risk reduction programming and treatment completion, in making paroling decisions. The commenter noted that an offender on a waiting list for programming can be bumped down the list by the Department so that an offender nearer to their discharge date can receive the programming before release. Notwithstanding that the offender has no control over the wait list, two points are assigned by the Board under its parole guidelines point system if an offender is on a "wait list" but has not completed the programming.

f. Treatment interventions that focus on the crime without attempting to heal neurobiological wounds are futile. The commenter posited that the Board should not use risk assessment as a tool to determine how soon an offender can be paroled and can gain access to non-punitive counseling, addiction and mental health treatment resources in the community that are not readily available through the Department of Corrections.

g. There is no mechanism in place for an offender who is “flopped” for multiple years, to reappear before the Board sooner than one year from the date of the Board action. The commenter stated that an attorney for the legislative services division alerted the Board or Department of that problem.

h. The commenter alleged abuse of power by prison staff, retaliatory discipline, denials of medication support to offenders under stress and in need of coping mechanisms, all amounting to an attempt to punish mental health into submission without providing anger management resources.

RESPONSE # 3:

a. The risk and needs assessment tools have long been in use around the country and were developed and validated by University of Cincinnati. The lengthy process of “norming” the validated instruments for Montana is not complete. The Board is an end-user of the risk and needs assessments administered by trained Department personnel. As such, the Board has no role in the validation process or the norming of the instruments.

   The Board is required by statute to use risk and needs assessments in making parole decisions. (46-23-218(3)(a)(i), MCA). The Board cannot adopt an administrative rule that conflicts with statute by, for example, omitting the risk and needs assessments from consideration in making parole decisions. Removal of that factor from among those that the Board must consider would require a legislative amendment.

   The Board is unable to respond herein to the matters contained in the comment which are unrelated to the rule proposal notice. The commenter is encouraged to submit comments relating to the specific content any rule proposal notice published by the Board.

b. Any alleged cultural bias against American Indian offenders that is allegedly inherent in risk and needs assessment tools is neutralized or countered by the requirements in 2-15-2305(3)(a), MCA; 46-23-218(1), (2), MCA; and ARM 20.25.102 (1), (2).

   Employment history and stability of an offender’s past employment experience is required to be considered by the Board in making paroling

decisions under 46-23-208(4)(j), MCA. Removal of that consideration would require a legislative amendment to the statute. The Board is generally able to address historical employment instability administratively by requiring certain education services be secured as a parole supervision condition, e.g., a requirement that the offender obtain a vocational rehabilitation evaluation and/or undergo job training or counseling while under supervision.

c. Any alleged cultural bias against American Indian offenders allegedly inherent in risk and needs assessment tools is neutralized or countered by the requirements in 2-15-2305(3)(a), MCA; 46-23-218(1), (2), MCA; and ARM 20.25.102 (1), (2).

   Household domestic violence is not unique to American Indian households. Board members must receive training in American Indian culture *and problems* under 46-23-218(1) and (2), MCA and ARM 20.25.102. The training mitigates any alleged bias borne of a lack of awareness of household domestic violence in American Indian households.

d. Any alleged cultural bias against American Indian offenders allegedly inherent in risk and needs assessment tools is neutralized or countered by the requirements in 2-15-2305(3)(a), MCA; 46-23-218(1), (2), MCA; and ARM 20.25.102 (1), (2).

   Education is required to be considered by the Board in making parole decisions under 46-23-208(4)(h), MCA, and in considering parole release conditions under 46-23-218(3)(c), MCA. Education is one of the domains evaluated in a risk and needs assessment as stated in (5) of [NEW RULE I]. Removal of education as a factor to be considered by the Board would require legislative amendments. The Board is generally able to address education deficits administratively by setting parole supervision conditions related to education in appropriate circumstances.

e. Wait lists for offenders in need to treatment do exist in the dynamic environment of offender programming. It is not uncommon for a person on a wait list to be bumped further down the list by the Department to accommodate the treatment needs of another offender who is nearer to their discharge or release date. The Board is required under 46-23-218(3)(a)(iii), MCA, to consider an offender's participation in risk reduction programs and treatment completion. That factor is therefore included as (2)(b) in the parole guidelines rule. The point system established in [NEW RULE I] is consistent with the "decreasing order of importance" measure in 46-23-218(3), MCA. If an offender has been unable to complete treatment for *any* reason, the risk still exists. The Board must take that

risk to the public into account when making parole decisions. When appropriate in light of all of the circumstances, the Board may be able to administratively address the issue of backlogs and waiting lists by ordering completion of treatment as a condition of parole supervision upon being paroled into the community.

f. Respectfully, the Board disagrees that “non-punitive” counseling, addiction, and mental health treatment resources are not readily available to offenders in prison. All of those resources are readily available. Provision of mental health and addiction related services in a prison setting does not make them “punitive” services.

   The Board is required by statute to use risk and needs assessments in making parole decisions. (46-23-218(3)(a)(i), MCA). The Board cannot adopt an administrative rule that conflicts with statute by, for example, omitting the risk and needs assessments from consideration so that offenders could parole to the community to secure “non-punitive” treatment services.

g. The Board did not receive a comment from an attorney for legislative services division concerning MAR Notice No. 20 25 70 pertaining to [NEW RULE I] (parole guidelines) or pertaining to ARM 20.25.704 (Conditional Discharge from Supervision). Reappearances before the Board sooner than 1 year after an offender is “flopped” for multiple years, is unrelated to MAR Notice No. 20 25 70. Accordingly, the Board is unable to respond to the comment herein. The commenter is encouraged to submit comments that are specifically related to any rule proposal notice that the Board publishes.

   In due course, the Board intends to publish notice of proposed amendments to ARM 20.25.402 which rule pertains, in part, to timing of reappearances before the Board after being denied parole. When that occurs, the commenter is encouraged to submit comments. In any event, the timing of reappearances is already set by statute (46-23-201(5), MCA) and the Board complies with that statute. Rules may not unnecessarily repeat statutory language. ARM 2-4-305(2), MCA.

h. Respectfully, the Board is not involved in and has no control over prison operations. If abuses of power by prison staff, retaliatory discipline, denials of medication support are alleged to have occurred, there are internal institutional procedures and remedies afforded to the offenders. The internal institutional procedures and remedies include grievance procedures, emergency grievance procedures, grievance appeals, disciplinary hearings, and disciplinary appeals. In addition, offenders have a right of access to the courts for the redress of cognizable legal claims.

COMMENT # 4: The commenter referred to the notice of public hearing on the parole guidelines rule but, otherwise, the comment was unrelated to the specific content of the rule proposal notice. The commenter stated that he was denied parole in 2020 and that the Board was to have begun using the MORRA point system in 2017. The remainder of the commenter's submission pertained to numerous other grievances and legal claims related to the commenter's individual legal circumstances.

RESPONSE # 4: As stated in the REASON for the parole guidelines as set out in the rule proposal notice, the statutory factors that the Board must consider in making paroling decisions and the framework for the point system and scoring model for weighting those factors in "decreasing order of importance", have been in use by the Board since August 2017. The rest of the commenter's comments were unrelated to the rule proposal notice and outside the scope of the rule hearing. Accordingly, the Board is unable to respond herein to those comments. The commenter is encouraged to submit comments that are specifically related to the content of any rule proposal notice that is published by the Board.

PROPOSED AMENDMENT OF ARM 20.25.704, Conditional Discharge from Supervision.

COMMENT # 1: Although no public comments were received pertaining to the proposed amendment of ARM 20.25.704 Conditional Discharge from Supervision, one comment was submitted alleging that the Board violated the rule in the commenter's particular circumstances.

RESPONSE # 1: Inasmuch as the comment is unrelated to the proposed amendments of 20.25.704 and is outside the scope of the hearing, the Board is not able to respond to the comment herein. The commenter is encouraged to submit comments pertaining to the specific content of any rule proposal notice published by the Board.

/s/ Colleen E. Ambrose
Colleen E. Ambrose
Rule Reviewer

/s/ Annette Carter
Annette Carter
Chair
Board of Pardons and Parole

Certified to the Secretary of State December, 2020

Received 12/22/20

STATE OF MONTANA
BOARD OF PARDONS AND PAROLE

STEVE BULLOCK, GOVERNOR

ANNETTE CARTER, CHAIRMAN

OFFICE: (406) 846-1404
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bopp@mt.gov

1002 Hollenbeck Road
Deer Lodge, MT 59722

December 16, 2020

Francis Tommy Chiefcalf
Montana DOC #2144176
c/o Montana State Prison
700 Conley Lake Road
Deer Lodge, Montana 59722

Re: Request for reconsideration of BOPP disposition and/or early administrative review

Dear Mr. Chiefcalf:

By this letter, the BOPP denies your request for reconsideration of your current parole disposition and/or your request for early administrative review. (The request for such relief was submitted on your behalf by Brian Smith, attorney at law.)

Your DOC record reflects Missoula County convictions (Cause No. DC-07-302) for Count I: Deliberate Homicide, Count II: Assault with a Weapon, Count III: Assault with a Weapon, and Count V: Robbery. By Judgment dated February 1, 2008, the District Court sentenced you to a term of 75 years imprisonment with 40 years suspended on Count I, and to terms of 20 years imprisonment on each of Counts II, III and V, such sentences to run concurrently. (The Judgment also included the District Court's dismissal of Count IV: Assault with a Weapon.)

The DOC sentence calculation in your case shows a parole eligibility date of April 29, 2016 and a custodial discharge date of July 24, 2042.

The BOPP conducted your initial parole hearing on February 28, 2016. The Board denied parole and set a reappearance for February 2019. The BOPP conducted your reappearance on February 26, 2019. The Board (members Carter, Bell and Bauer) denied parole and set another reappearance for February 2022. The February 2019 disposition recommended you obtain T4C or a similar cognitive-based program and continue your placement at the WRC. The 2019 disposition reflects the Board's finding that parole at that time would be inconsistent with the nature and severity of your crimes and would diminish the impact of your crimes on the victims/community.

Your pending request for relief raises several grounds.

First, you argue the BOPP should reconsider your parole application in light of the CoVid 19 pandemic. The Board, in fact, has reviewed a number of cases for possible early release consideration pursuant to a directive issued by Montana Governor Bullock. The Board considers several criteria with respect to CoVid early release decisions. Specifically, the Board looks for offenders who: are parole eligible; have less than 12 months remaining on their custodial sentences; have convictions for non-violent, non-sexual

crimes; do not present community safety issues; have been assessed as low risk to reoffend; who are at high risk for infection as the result of age or medical issues; and have viable parole plans with confirmed community support.

Under the Governor's directive, the Board determines you do not qualify for CoVid early release consideration. Your crimes are violent offenses. Your most recent risk assessment (the one considered by the Board in February 2019) indicated a moderate risk to reoffend. Your custodial discharge date is well in excess of 12 months. You have not identified any physical/medical condition(s) that would put you at higher risk of CoVid infection that the general population, inmate or otherwise. To date, you have not completed the cognitive-based program identified by the Board as being necessary to address public safety concerns.

Second, you contend the BOPP relied on erroneous or false information in rendering the February 2019 disposition. The Board may reconsider a parole disposition if "the offender can present evidence that the hearing panel's decision was based on erroneous or false information, or that a hearing was not conducted according to board procedure." Rule 20.25.501(7), Administrative Rules of Montana. In seeking a rehearing, the offender bears the burden of proving that the Board relied on erroneous/false information or acted outside the scope of established hearing procedure.

In the instant case, you do not argue or present evidence that the Board conducted your February 2019 hearing in a manner contrary to established hearing procedure. Thus, resolution of your request for reconsideration involves a determination of whether the Board relied on erroneous or false information in denying parole. As noted above, you have the burden of showing that the Board relied on false information.

With respect to erroneous information, you assert that your Robbery conviction was dismissed by the District Court after your successful appeal to the Montana Supreme Court. You attach a copy of a January 23, 2009 District Court order dismissing "Count IV: Robbery [sic]" on motion of the State. (As noted above, the Information filed in your District Court case charged the Robbery offense as Count V.) You contend the Board "continues to record the robbery charge in its dispositional information." You also argue the robbery conviction "would influence Board members in their decisions." Your contention regarding the record appears to confuse the Board with the DOC. Offender management records are maintained by the DOC, not the Board. Moreover, the argument that the Board "continues to record" erroneous reference to the robbery charge in its dispositional information is incorrect. Neither of the parole dispositions in your case contain any reference to the robbery charge. You speculate that the robbery charge improperly "influenced" the February 2019 hearing panel. However, such speculation does not constitute evidence and falls short of your burden of proof to show the Board relied on false information to deny parole. The robbery charge notwithstanding, your record still includes convictions for deliberate homicide and two counts of assault with a weapon, all violent offenses. The record also includes your risk assessment. Under the circumstances, reconsideration is not required.

Third, you cite Rule 20.25.402, Administrative Rules of Montana, to argue the Board should conduct an early administrative review of your case based on new information or a change in your circumstances. The decision to grant early administrative review rests within the Board's discretion upon consideration of various factors. Your continued clear conduct and additional work on your parole plan, for example, weigh in your favor. The fact you have not completed cognitive-based programming, even if only as the result of limited space in appropriate DOC programs, weighs against an early administrative review. The Board considered your risk assessment and public safety interests in determining you should successfully complete cognitive-based programming prior to being returned to the community. Those factors have not changed since the February 2019 disposition. Your claim that similar cognitive-based programming would be available in the community does not address the Board's underlying concern that the program should

precede community re-entry. Under the totality of the circumstances, an early administrative review is not required. You will still see the Board in approximately 14 months as scheduled.

Fourth, your request includes an argument that the February 2019 hearing panel improperly gave more weight to the nature and severity of your crimes than to other factors established by applicable statute. Section 46-23-218(3), MCA, requires the Board to adopt parole guidelines including, in decreasing order of importance, the prisoner's: (i) risk and needs levels, as determined by a validated risk and needs assessment; (ii) participation in risk-reducing programs and treatment; (iii) institutional behavior; and (iv) offense severity.

You argue the reference to the nature and severity of your crimes in both the 2016 and 2019 parole dispositions shows the Board gave too much weight to that single factor. However, such argument ignores your risk assessment at the time of your February 2019 hearing. You were (and are) assessed as a moderate risk to reoffend without additional programming. The Board appropriately considered the risk factor as well as the nature/severity of your crimes. Moreover, the Board's determination that you should complete a cognitive-based program prior to community release demonstrates the hearing panel's consideration of that statutory factor. The Board also noted your institutional clear conduct during the February 2019 parole hearing. While the record indicates the February 2019 hearing panel considered all of the factors set forth in Section 46-23-218, you also should note that Section 46-23-208, MCA, remains in effect as well. Pursuant to Section 46-23-208, the Board's exercise of discretion in parole decisions properly includes consideration of the circumstances and severity of the offender's crime(s), whether parole release is in the best interests of society, and whether there is a reasonable probability the offender can be released on parole without detriment to the community. The Board rejects the unsupported argument that your February 2019 disposition was based on consideration of only one applicable factor.

The Board does not discount the progress you have made during your incarceration. You are encouraged to continue your clear conduct, participation in available programming and work/volunteer activities, and preparation for your February 2022 reappearance.

Sincerely,

Brad Newman
BOPP Member

cc: Brian C. Smith, Attorney at Law, P.O. Box 8121, Missoula, MT 59807

October 8, 2020

Dear Secretary of State's Office,

In review of the Board of Pardons and Parole's proposed adoption and amendment of 20.25.704, I am submitting objection to the stated changes via public comment for the following reasons:

NEW RULE 1 PAROLE GUIDELINES:

(a) The Board of Pardons and Parole should not consider in its guidelines to release a prisoner, the resulting score contained in the MORRA, WRNA or other risk assessments because the assessment survey inquiries and associated subject matter formulaically result in bias' against people of color (BIPOC- Black, Indigenous, People of Color). These results inappropriately give minorities an elevated "score" in comparison to the majority.

Attached to this public comment is a (PDF) collection of blank MORRA survey forms that I will be referring to throughout this section of my public comment. The MORRA survey examples and corresponding questions should examined by the reader as reference. This PDF is to be included as part of my public comment.

Risk Assessments: Adverse Childhood Experiences

The BOPP should not predicate a person's future on elevated scores from a risk assessment tool that weighs on factors from a prisoner's childhood upbringing which include adverse childhood experiences (ACEs). ACEs are adverse childhood experiences that an individual was exposed to. ACEs come in many forms from physical, mental and sexual abuse to physical and emotional neglect and household dysfunction: having a relative who is incarcerated, exposure to mental illness, substance abuse, divorce, and/or having a mother who was treated violently. Adverse childhood experiences extend beyond what happens within a child's home to include community and environmental impacts such as racism bullying and community violence.

[Source: https://www.joiningforcesforchildren.org/what-are-aces/]

The devastating effects of childhood trauma manifest in 91% of incarcerated persons having 4 or more adverse childhood experiences growing up.

It is important to note the findings from a study on the adverse childhood experiences of people in prison which state "*It is our belief that treatment interventions that focus on the outcome variable (crime) without attempting to heal these neurobiologic wounds are destined to fail.*" Why then, would the BOPP use risk assessments as a tool to determine how soon one can access the dire resources o**f non-punative** counseling, addictions and mental health treatments that are not readily available through the Montana Department of Corrections?

Risk assessments: Employment

As you will see on the assessment titled *Montana Offender Reentry & Risk Assessment System Prison Screening Tool (MORRA – PST) – Self-Report Survey* (page 3 of MORRA pdf), the first 4 questions inquire into the offender's employment and job history.

Montana Offender Reentry & Risk Assessment System
Prison Screening Tool (MORRA – PST) - Self-Report Survey

Name: _____ DOC ID: _____ Date: _____

The following questions ask about several things in your life, such as education, employment, your family, friends, and your beliefs. Please answer the following questions the best you can. There are no right or wrong answers to these questions. Some questions will be simple yes/no questions and others will ask you to circle a number which corresponds to how much that statement reflects your beliefs or is "true" for you.

1. Were you employed at the time of your arrest? Yes ____ No ____
   If "Yes", how many hours per week did you work? _____
2. Prior to your arrest, how would you describe your employment?
   ____ Full-Time
   ____ Part-Time
   ____ Self Employed
   ____ I was On Disability
   ____ I am Retired
   ____ I was Not Employed
3. Have you ever quit a job without having another one? Yes ____ No ____
4. How many months were you employed in the past two years prior to incarceration? _____
5. In your opinion, prior to incarceration did you have a lot of free time? Yes ____ No ____
6. On average, approximately what percent of your week is considered free time? _____ %
7. Who were you living with prior to incarceration?
   ____ Spouse or Significant Other
   ____ Family
   ____ Friend
   ____ Alone
   ____ On the Street or In a Shelter
   ____ Other (Please Indicate) _____
8. Current Marital Status:
   ____ Married (or common law)
   ____ Divorced
   ____ Single
   ____ Widowed
   ____ Separated
9. How long did you live at your address at which you lived prior to your incarceration? _____
10. While at this address, did you: Own ___ Pay Rent ___ Help Pay Bills ___ Just Stay There ___
11. How many addresses changes did you have in the 12 months prior to your incarceration? _____

For the following statements, circle the answer that best describes how you feel?

12. Are you satisfied with your current marital situation? (If single, how satisfied are you with being single?)

Not Satisfied			Very Satisfied
1	2	3	4

13. Are you satisfied with your current housing situation?

Not Satisfied				Very Satisfied
1	2	3	4	5

THANK YOU.

MORRA PST SR - 1 of 1

These question pertaining to employment will yield very different results for persons living on a Montana Indian Reservation than a person who resides in an off-reservation city.

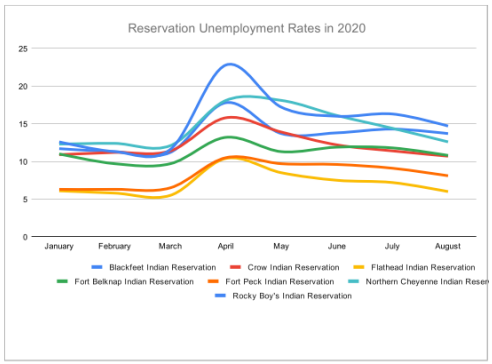
It is critical to understand that that right now, in the midst of the Covid-19 pandemic, the overall population of Tribal Nations in Montana have reached 85% to 90% unemployment. Prior to the Covid 19 pandemic, unemployment rates of the overall populations living on an Indian Reservation were estimated to be around 60%.

[Source: (audio recording) from Marketplace.org dated 5/28/2020: https://www.marketplace.org/2020/05/28/unemployment-on-blackfeet-reservation-worsened-by-covid19/]

The graph and chart below were acquired from the Chief Economist at Montana Department of Labor and Industry's Research Analysis Bureau on October 8, 2020. The monthly Unemployment Rates listed by tribe show the year's unemployment rates on Montana's reservations. This spreadsheet for 2020,

updated with the most recent data (August is the most recent month available) for LAUS, estimates the unemployment rates on Indian reservations in Montana. *Important note: there is a very different definition of "unemployment rate" between the information listed above and below.

Month	Blackfeet	Crow Indi	Flathead I	Fort Belkn	Fort Peck	Northern (	Rocky Boy's Indian Reservation
January	11.7	10.9	6.1	11	6.3	12.3	12.6
February	11.3	11.2	5.8	9.7	6.3	12.4	11.3
March	11.2	11.4	5.5	9.7	6.5	12.1	11.6
April	17.8	15.8	10.4	13.2	10.5	18.1	22.8
May	13.7	13.9	8.5	11.3	9.7	18.1	17.2
June	13.8	12.2	7.5	11.9	9.6	16.1	16
July	14.3	11.4	7.2	11.8	9.1	14.4	16.3
August	13.7	10.7	6	10.8	8.1	12.6	14.7



If your eyebrows are raised, the (attached) report *Unemployment: Barriers in High Poverty Areas Examined Under SJR20,* FINAL REPORT TO THE 66TH MONTANA LEGISLATURE by the Economic Affairs Interim Committee may provide clarity to the questions you may have. As mentioned in the note above, please keep in mind there is a critically drastic difference in the definition of "Unemployment rate" used to by the Bureau and Indian Affairs and the Montana Department of Labor! This difference underscores the lack of congruency that risk assessments such as the MORRA and WRNA consider when inquiring about employment with Native Americans versus the larger the population. According to the report (page 10), "Job Availability is One Aspect of Employment; Overcoming Barriers is Another". There is an overwhelming percentage of Native people who are "not working but are available for work". This manifestation comes from a multi-layered dynamic that encompasses the lack of jobs in existence in their geographic locations and a lack of access to the employment itself (availability of consistent childcare, transportation between rural land allotments to the business centers of the reservation, etc). Reliable transportation, dangerous terrain and the scarcity of even parttime employment may also play a part in obtaining and maintaining employment. Native people on and off the reservation, have a very different relationship with "employment" experiences and scores from the risk assessments that the BOPP plans to use for parole consideration do not account for this difference. Native people are being inappropriately scored as being a higher risk simply because of the economic situation from where they come. These disparities are not accounted for in the risk assessments and will unfairly and inaccurately deem Native persons as being a higher risk than others.

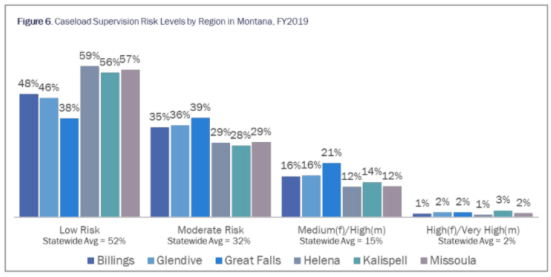
The above mentioned report can also be accessed at this link:
https://leg.mt.gov/content/Committees/Interim/2017-2018/Economic-Affairs/Meetings/Apr-2018/SJR20-final-report-draft4-12-18.pdf

Risk Assessments: Not validated for the Montana population

According to the 2019 study conducted by the Council of State Governments for MTDOC (attached), "The MORRA and WRNA have not been validated on the Montana population. Revocation rates range from 27 to 40 percent depending on the region in Montana, yet 84 percent of the supervision population is assessed as low or moderate risk (see Figure 6). This shows there is potentially a discrepancy between the assessed risk level and high rates of reincarceration. To understand these discrepancies, the MORRA and WRNA should be validated on the population in Montana." (Source: MONTANA CASELOAD STUDY REPORT Dated December 2019, Pg. 11), attached.

CSG Justice Center
THE COUNCIL OF STATE GOVERNMENTS

2. **The MORRA and WRNA have not been validated on the Montana population.** Revocation rates range from 27 to 40 percent depending on the region in Montana, yet 84 percent of the supervision population is assessed as low or moderate risk (see Figure 6).[23] This shows there is potentially a discrepancy between the assessed risk level and high rates of reincarceration. To understand these discrepancies, the MORRA and WRNA should be validated on the population in Montana.



It is estimated that Native Americans account for approximately 23-30% of the prison population in Montana. Some argue that the actual number is significantly higher. With this large population, it is critical that the risk assessments score the Native American segment of the population in a way that accounts for the significant disparities that exist amongst Montana's populations without increasing the "risk score" for these individuals. It does not make sense for the BOPP to use risk assessments that have not been properly validated for Montana.

The Council of State Governments recommended the following:

Recommendations

Montana Department of Corrections

- **Ensure the accuracy of the MORRA and WRNA by validating each tool by race and gender.** MDOC should implement quality assurance (QA) and continuous quality improvement (CQI) protocols to ensure the accuracy of MORRA and WRNA assessments. QA is an audit process that retrospectively examines completed assessments to ensure they are fully filled out and scored according to designated protocols. CQI requires direct observations of staff conducting assessments to ensure interviews are completed appropriately and the assessment is scored properly. Both QA and CQI protocols are necessary to ensure the accuracy of assessments. The validation of the MORRA and WRNA should not happen until the accuracy of assessments is confirmed through QA and CQI protocols; otherwise MDOC risks validating assessments on incorrect data. Once the accuracy of assessments is confirmed, through QA and CQI protocols, MDOC should validate the MORRA and WRNA assessments on the supervision population in Montana with racial and gender breakdowns. To the extent possible, validation should adhere to best practices and standards that have been developed through current research.[24] Ensuring accuracy and validating assessment tools will guarantee that people on supervision are supervised at the appropriate level and receiving necessary services to reduce recidivism.

*If corrections or validations have since been made for MORRA or WRNA for the Montana population, I do request that this information be made available to the public and that there be another hearing scheduled to provide the public the opportunity to make public comment before the BOPP adopts risk assessments into their risk scoring.

Risk Assessment: Educational experiences

In review of the *Montana Offender Reentry & Risk Assessment System Prison Intake Assessment Tool (MORRA - PIT) Self-Report*, (below), it is necessary to counter the presence of school experience questions on risk assessments considered by the BOPP with and "weight" because we know that in Montana, "Indigenous students are disproportionately pushed out" of the classroom as punishment for behaviors that are considered "adolescent", not criminal." The 2019 ACLU study *Empty Desks: DISCIPLINE & POLICING IN MONTANA'S PUBLIC SCHOOLS* (available at: https://www.aclumontana.org/en/edureport2019) explains that in Montana, Native American students, Students of color, and students with disabilities experience the greatest disparities in discipline. "Laurie Walker, a social work professor at the University of Montana, helped write the report and says schools funnel Native American students into the criminal justice system, especially when they come from unstable homes." "Native American students lost nearly six times the amount of instruction due to out-of-school suspensions and were arrested more than six times as often as their white peers in the 2015-2016 school year." "Notably, female Native American students had the highest school-related arrest rates among all students; they were arrested at 12 times the rate of white female students."

Risk assessment questions as displayed in the MORRA that make inquiry into if an offender had previously been expelled or suspended from school, further marginalizes the that person especially when coupled with questions about other life experiences such as employment and adverse childhood experiences.

Also see this article:

https://www.mtpr.org/post/report-montana-public-schools-disproportionately-discipline-indigenous-students

Montana Offender Reentry & Risk Assessment System
Community Supervision Tool (MORRA – CST) - Self-Report Survey

Name: _____ DOC ID: _____ Date: _____

The following questions ask about several things in your life, such as education, employment, your family, friends, and your beliefs. Please answer the following questions the best you can. There are no right or wrong answers to these questions. Some questions will be simple yes/no questions and others will ask you to circle a number which corresponds to how much that statement reflects your beliefs or is "true" for you.

1. Highest Education:
   - _____ Less than 12th Grade
   - _____ High School Graduate
   - _____ GED
   - _____ College
2. In school were you ever suspended or expelled? Yes ____ No ____
3. How long have you lived at your current address? _____
4. How many addresses changes have you had in the past 12 months (do not count incarceration)? _____
5. What is the age that you first began regularly using alcohol? _____
6. How long has it been since you last drank alcohol? _____
7. What is the longest period of time you have abstained from drinking? _____
8. What percent of your close friends have been in trouble with the law? _____ %
9. Would you say that you live in a "high crime" neighborhood? Yes ____ No ____
10. Were you employed at the time of your arrest? Yes ____ No ____
11. If "Yes", how many hours per week did you work? _____
12. Are you currently employed?
    - _____ Full-Time
    - _____ Part-Time
    - _____ No, I am On Disability
    - _____ No, I am Retired
    - _____ No, I am Not Employed
13. In your opinion, prior to incarceration did you have a lot of free time? Yes ____ No ____
14. On average, approximately what percent of your week is considered free time? _____ %

MORRA CST SR - 1 of 2

For the following statements, circle the answer that best describes how you feel?

15. How easy would you say it is to acquire drugs in your neighborhood?
    Very Easy 1 2 3 4 Very Difficult
16. Are you satisfied with your current marital situation? (If single, how satisfied are you with being single?)
    Not Satisfied 1 2 3 4 Very Satisfied
17. How would you rate your current financial stability?
    Cannot Pay Bills 1 2 3 4 Can Pay Bills & Have Extra $
18. Are you satisfied with your current housing situation?
    Not Satisfied 1 2 3 4 5 Very Satisfied
19. Please rate the level of emotional and personal support you receive from family and friends.
    No Support 1 2 3 4 5 Great Deal of Support
20. Please rate how satisfied you are with the level of support you receive from family and friends.
    Not Satisfied 1 2 3 4 5 Very Satisfied
21. I'm often upset when I hear about other people's problems.
    Strongly Agree 1 2 3 4 5 Strongly Disagree
22. Do you think it is ever OK to lie?
    Never or Only White Lies 1 2 3 4 5 It is OK to Lie
23. Lately, I have felt a lack of control over events in my life.
    Strongly Agree 1 2 3 4 5 Strongly Disagree
24. I sometimes find it exciting to do things for which I might get into trouble.
    Strongly Agree 1 2 3 4 5 Strongly Disagree
25. Would others describe you as someone who walks away from a fight or the first to get into it?
    Walks Away 1 2 3 4 5 First One In
26. How much do you agree with the statement: **"Do unto others *before* they do unto you?"**
    Strongly Agree 1 2 3 4 5 Strongly Disagree

THANK YOU.

MORRA CST SR - 2 of 2

<u>Risk Assessments: additional things to consider</u>

Ultimately, the MORRA, WRNA and risk assessments generally do not account for the fact that these people, by they time they are "parole eligible", have *already* been endured punishment for their crime(s). How does it make any sense to be assessed for parole, based on their life <u>prior</u> to the crime for which they have been charged, sentenced and served a significant percentage of time for?

I object to the risk and needs assessment(s) being part of the framework or tool that the BOPP uses to score folks on because the results will undoubtedly yield a pattern of people of color (BIPOC) being disproportionately retained in custody while white people more often being granted parole. The overall nature of the risk assessments utilized by the Montana Department of Corrections are prone to rank those coming from mainstream communities as lower risk and people who grew up in communities different from the mainstream such as Indian Reservations and other rural settings on the higher end of the "risk" spectrum.

Risk assessments such as the MORRA and WRNA as utilized the Montana Department of Corrections, systematically swirl an offender down towards the expectation of recidivism instead of elevating that person towards access to critical community supports (such as non-punative programming, treatment, counseling, etc.) to heal from these traumas that led them to the prison in the first place. The way that the risk assessments weigh on the 0-6 point system, starts the offender at zero and faults them for experiences they have no control over rather than attributes that they can build upon.

Allowing risk assessments such as the MORRA and WRNA to increase a person's risk scoring in the eyes of the BOPP, perpetuate and prolong the incarceration, isolation and dehumanization of the most traumatized members of our society.

It simply does not make sense to embed a risk assessment score into a person's future as it is only frontloading them for revocation, rather than success.

Please consider the above public comment and remove the risk assessments from the BOPP's guidelines for Parole consideration.

As for the Risk reduction program and treatment completion, I have made in-person public comment at the hearing but will quickly reiterate that the being given 2 points for "being on the waitlist for risk reduction programming simply does not make sense because not having access to the program is not of the offender;s control. Even if they volunteer, the Department of Corrections does not have the programming available. The DOC has a fluid waiting list that is also out of the control of the offender population. People on the wait list are constantly bumped from their position because a different offender is approaching their release date. This waitlist is a great problem for the DOC and for offenders. It is not anything that the BOPP should consider or assign a point value to.

Institutional behavior/ infractions

As discussed by several people at the in-person Zoom meeting, the scoring for offenders based on infractions is problematic. I ask that you please keep in mind that infractions at Montana Correctional institutions are rarely "violations of the law" in normal society. People are rampantly written up for "insolence" and sent to solitary confinement for behaviors or reactions that retaliatory guards simply don't like. There really needs to be an audit done on infractions deemed "insolence" at Montana State Prison because it is a very much abused by those in power. A few examples of insolence are not standing up fast enough for count, rolling eyes or quietly sighing as a human reaction to a guard's abuse of authority, walking too fast, not wearing a shirt back to the cell from the shower, etc. Again, these infractions are not violations of any law in the outside world so why on earth would the BOPP consider these as anything that would influence that individual staying in prison longer (costing tax payer dollars and keeping people away from their communities/ families)? It is also important to recognize that the behavior humans express while in prison are under high stress, high pressure situations and those who need access to coping mechanisms and medication are regularly denied these supports. Without access to these things some would argue that the DOC is trying to punish mental health into submissions without giving them access to anger management, non-punative counselors or medications for anxiety, depression and other conditions that are elevated in a prison setting.

Thank you,

_____

Laurie Little Dog

1/24/2021

List of active lawsuits may not include all current litigation.

The attached Human Rights Commission (HRC) case docket, includes Case number CASE #0200204. It is a Human Rights complaint of a State inmate, Mr. John Navarro Stone. who is being held under contract at Cascade County Regional Prison. Mr. Stone has brought a Human Rights complaint about the Prison not letting inmates access Religious Accommodations/ Programming. The complaint includes information that Inmates are being denied Bibles and associated study through the Jehovah Witnesses. The appeals hearing was scheduled to be held this past Friday 1/22/2021 in front of the MT Human Rights Commission.

Initially, the prison did not allow Mr. Stone to access a telephone in order to partake in the scheduled hearing. That is until the prison was called and insisted that Mr. Stone was missing the hearing that was already underway. I believe that the new Chair of the Human Rights Commission may have witnessed this situation over Zoom, as Friday the position of chair shifted from Mr. Tim Tartarka to Mr. Curt Almy. Unfortunately, the occurrence of correctional facilities not permitting inmates to attend administrative hearings in which the correctional facility is listed as the defendant is not uncommon. Luckily, advocates were able to catch this adverse action as it unfolded and were able to get Mr. Stone on the prison telephone to provide oral argument and present his appeal.

So, although the Department did report to this subcommittee that there are 67 current lawsuits, **additional legal complaints may exist** (ie: John Stone v. Cascade County Regional Prison, CASE #0200204). This Human Rights complaint will soon be filed in District Court. The contracted facility is accused to denying rights available to other DOC inmates. The religious accommodations may be protected under federal law.

At any rate, the link to the HRC docket is here: http://erd.dli.mt.gov/Portals/54/Documents/Human-Rights/dli-erd-hrb83.pdf?ver=2021-01-05-085542-987

Moving forward, it might be appropriate for DOC's Legal Department (or this subcommittee) to cross-reference for cases involving contract facilities that house DOC commits and State inmates, specifically:

Crossroads Correctional a.k.a. Core Civic in Shelby;

Cascade County Regional Prison a.k.a. Great Falls Detention Center in Great Falls;

and Dawson County Regional Prison a.k.a. Dawson County Correctional Facility in Glendive.

I hope you find this information to be helpful.

Laurie Little Dog

Montana Department of
LABOR & INDUSTRY

MONTANA HUMAN RIGHTS COMMISSION HEARING
January 22, 2021

VIA REMOTE VIDEO CONFERENCE CALL

Interested parties may access the remote conferencing platform in the following ways:

1. **Join Zoom meeting:**
   https://mt-gov.zoom.us/j/96709491753
   Meeting ID: 967 0949 1753

OR

2. **Dial by telephone:**
   +1 646 558 8656 or +1 406 444 9999
   Meeting ID: 967 0949 1753

9:00 a.m. Call to Order
Introduction to the Use of the Videoconference and Telephonic Platform
Approval of Minutes
Public Comment
Administrative Reports

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1. **CONSIDERATION OF THE CHARGING PARTY'S OBJECTION TO THE NOTICE OF DISMISSAL AND RIGHT TO FILE CIVIL ACTION IN DISTRICT COURT**

John Stone v. Cascade County Regional Prison
CASE #0200204
ORAL ARGUMENT

John Stone, *Pro Se*
Mark F. Higgins, Respondent's Attorney

2. **CONSIDERATION OF THE CHARGING PARTY'S OBJECTION TO THE NOTICE OF DISMISSAL AND RIGHT TO FILE CIVIL ACTION IN DISTRICT COURT**

Scott Carter v. Shepherd School District No. 37
CASE #0200184
ORAL ARGUMENT

Kelly Varnes, Charging Party's Attorney
Mary Duncan, Respondent's Attorney

3. **CONSIDERATION OF THE CHARGING PARTY'S OBJECTION TO THE NOTICE OF DISMISSAL AND RIGHT TO FILE CIVIL ACTION IN DISTRICT COURT**

Laura Meyer v. Hardin School District
CASE #0200281
ORAL ARGUMENT

Laura Meyer, *Pro Se*
Laurence R. Martin, Respondent's Attorney

4. **CONSIDERATION OF THE CHARGING PARTY'S OBJECTION TO THE NOTICE OF DISMISSAL AND RIGHT TO FILE CIVIL ACTION IN DISTRICT COURT**

Ciel Schofield v. Providence St. Joseph's Medical Center
CASE #0200248
ORAL ARGUMENT

Jason A. Williams, Charging Party's Attorney
Ronald A. Bender, Respondent's Attorney

5. **CONSIDERATION OF THE CHARGING PARTY'S OBJECTION TO THE NOTICE OF DISMISSAL AND RIGHT TO FILE CIVIL ACTION IN DISTRICT COURT**

Clayton Workman v. Walmart
CASE #0200286
NO ARGUMENT

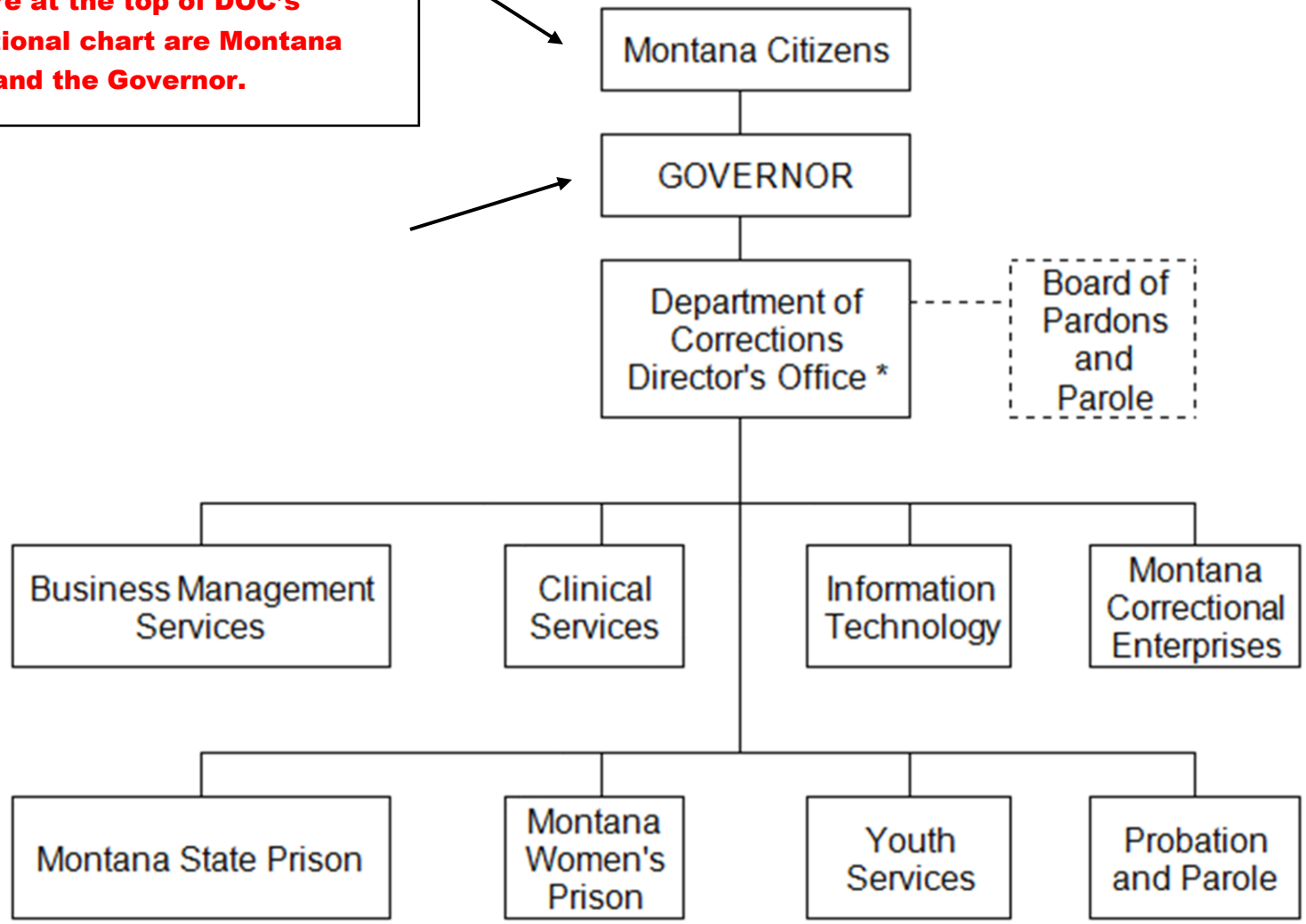
Clayton Workman, *Pro Se*
Elizabeth Bonucci, Respondent's Attorney

Montana Department of
LABOR & INDUSTRY

Notice to Persons with Disabilities: The Human Rights Commission is committed to providing access to persons with disabilities for its meetings in compliance with Title II of the Americans with Disabilities Act and the Montana Human Rights Act. The Commission will not exclude persons with disabilities from participation at its meetings or otherwise deny them the Commission's services, programs, or activities.

Persons with disabilities requiring accommodations in order to participate in this meeting should contact the Human Rights Bureau as soon as possible before the meeting to permit the Commission sufficient time to arrange for the requested accommodation. Please contact Annah Howard at 406-444-4356 if you require any accommodation to permit your participation.

Note: Here at the top of DOC's organizational chart are Montana Citizens and the Governor.



* Director's Office includes:
- Executive Office
- Legal Services Office
- Investigations Office
- HR and Prof. Dev. Office
- Quality Assurance Office

Organizational Chart
Department of Corrections
December 2014

Director of Corrections

Governor - Approved

Why did DOC recently remove Montana Citizens and the Governor from their Organizational Chart???

MONTANA DEPARTMENT OF CORRECTIONS

ORGANIZATIONAL CHART

DIRECTOR

DIRECTOR'S OFFICE

- provides centralized leadership, determines direction and priorities, and establishes overall policy for the department.

- Executive
- American Indian Liaison
- Communications
- Investigations
- Legal Services
- Quality Assurance

DEPUTY DIRECTOR

ADMINISTRATIVE SERVICES

-manages the department's annual budget and provides fiscal, information technology, human resources, project management, procurement, contracts and other support services to all programs.
-Montana Board of Crime Control also falls within this division.

CLINICAL SERVICES

- oversees all medical, behavioral health, treatment, dental and vision services for offenders in the custody of the department in its secure facilities.

PINE HILLS CORRECTIONAL FACILITY

- secure facility which separately houses male juvenile offenders (10-17 years) and males (18-24) for specialized treatment.

MONTANA CORRECTIONAL ENTERPRISES

- provides general and vocational education, on-the-job training and real-world work experience in industry, vocational and agricultural programs for offenders.

MONTANA STATE PRISON

- secure male facility which houses up to 1,600 inmates, contract management for regional and private prison beds.

MONTANA WOMEN'S PRISON

- secure female facility which houses up to 250 inmates.

PROBATION & PAROLE

- supervises Montana's offender population in the community.

PROGRAMS & FACILITIES BUREAU

- oversees and manages contracts for DOC-contracted assessment, sanction and revocation centers, treatment programs, and prerelease centers.

MONTANA BOARD OF PARDONS AND PAROLE

- decides which inmates have earned early release from prison; determines conditions imposed on offenders while under community supervision; and manages parole revocations and applications for executive clemency. (An autonomous, quasi-judicial body administratively attached to DOC for budgetary purposes.)

Bill: HB-2: General Appropriations Act 2021-01-26 09:00 AM - (H) JAS on Judicial Branch, Law Enforcement, and Justice
Position: Opponent
Representing an Entity/Another Person: Yes
Organization: Opening Doors
Name: Josh Butterfly
Email: butterflyjosh4@gmail.com
Phone: (406) 217-6518
City, State: Great falls
Written Statement: Testify for mistreatment of probationers and parolees in the work place when bosses exploit the to do things beyond the scope of there duties. This is part of there programming and the face challenge and make decisions to allow this exploitation to occur. I have reached out to probations and parole and the pre release to get some resolve. These individuals work two to three jobs just to fulfill there programming obligations. Equality treatment for wards of the state in the work force.

Bill: HB-2: General Appropriations Act 2021-01-27 08:00 AM - (H) JAS on Judicial Branch, Law Enforcement, and Justice
Position: Opponent
Representing an Entity/Another Person: No
Organization: N/A
Name: Marcos Bullchild
Email: marcosbullchild2@gmail.com
Phone: (406) 217-3185
City, State: Great falls
Written Statement: I was an employee at Boston's Pizza and sports bar. On July 28 2019 I was involved in a chemical spill that covered me from head to toe firefighter GL38 antifreeze from the sprinkler system. This chemical made me sick from the fumes and ingesting the chemical. I made several complaints to the management team and I was told that the chemical was non toxic whatsoever that it can be swallowed, touched and you can do whatever with it. Myself and other probationers and parolees where instructed by the management team to push this chemical out the back door into the water drainage system. Management team are Mario Bullchild, Shawna Rothwell, Mark Rothwell, Tom jarvis, Matt jarvis, kaci mitchell, robert kreppes, co owner Leanne, on site firefighter that monitors the system. I made several complaints throughout the night that I was not feeling good and that the antifreeze was getting in the food. The chemical spill took place at 6 pm and I served food with this chemical in to food to the public under the instructions of the management team until closing 11 pm. I reached out to probation and parole to inform them of this situation to no avail. These are not just owners of Boston's all co owners of Gus's and jack Big O Tires, sunrock development inc. where on site the night of the spill and secretly with heald the safety data sheet of fire fighter GL38, Which lists a strategical plan on how to dispose and first aid if you come in contact with this chemical. Workers comp claim number for the incident is 3132097. Contact person will be Debbie. Also enclosed with the packets of information is the safety data sheets. This management team put profit over public safety and put the safety of there employees in danger. Boston's exploits individuals on probation and parole, ex felons and individuals in the pre release center. This management team forced wards of the state to commit a crime, civil injustice and environmental by forcing these individuals to push this chemical out the door and to be served to the public. By using there felony status as leverage to do so. I am still to date having issues with my skin due to the 5 1/2 hour of exposure both internal and external. This is a direct assault on public safety and needs to be address. And to located the individuals that ingested this chemical due to the medical complication that this antifreeze continues to have on me. I received retaliation from this management team for blowing the whistle on this cover up. My 2018 taxes are being with heald by Shawna Rothwell, Robert kreppes. I files with the IRS a complaint regarding my taxes being with heald by boston/sunrock development inc. The public need to be aware that this chemical that was served to them in the pasta dishes on July 28 2019 from 6pm to closing. The public that ingested his chemical can be having the same health issue. They might not know why they are sick. Thank you.