

Bill: HB-2: General Appropriations Act 2021-02-02 08:00 AM - (H) JAS on Judicial Branch, Law Enforcement, and Justice

Position: Opponent

Representing an Entity/Another Person: No

Organization: N/A

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Written Statement: Dear HB2: Subcommittee on Judiciary, Law Enforcement and Justice, This written comment and supporting documentation is being submitted to this budget committee to fulfill the dutiful purpose to expose one of many circumstances in which the Department of Correction's willful actions open the State of Montana up to liabilities that make the state vulnerable to litigation and threaten the integrity of the U.S. and Montana Constitutions.

Sidebar: Please see the attached information about ongoing Religious Rights Accommodation violations by the Montana Department of Corrections. Please pay special attention of Gmail titled, "Urgent: Religious accommodations for all natives regardless of housing classification" as it presently defies the U.S. Dept of Justice's position on Religious Accommodations which prohibits the substantial burden of religious exercise for incarcerated persons. This requires immediate attention.

Over the course of the DOC's budget request hearings, we have heard the Deputy Director state that the Department of Corrections currently has 9.5 FTEs and 7 Attorneys. The Dept of Corrections submitted to this Joint Appropriations Committee, a written supplement dated 1/21/2021 that contains in Attachment B a litigation list of 67 open cases against the DOC (which may not include additional lawsuits involving contracted facilities in Shelby, Great Falls and Glendive). I ask that this subcommittee please consider an intensive investigation into this Agency's policies & procedures with special attention to all informal and formal grievances, complaints, and kites (including medical) placed by wards of the state and the public. The high number of open lawsuits and the extremely significant rate of complaints that marginalized persons are bringing forth complaints of abuse warrant a wide investigation and overhaul of DOC policies & procedures, a re-staffing of the correctional facilities up from and below managers. I encourage this committee to take a look at the 67 listed lawsuits and see that most cases have multiple defendants listed. Your investigation will reveal a pattern of the same defendant's names coming up time and time again. Why are these recurring names of problematic employees of the State being protected? Why are taxpayers funding the paychecks of repeat offenders who are actually employed by the DOC and Montana correctional facilities? What is going on with the staff performance reviews and why are the problems that are reported through litigation, grievances and kites not connected as a recurring theme with certain staff? Why during the December 9, 2021 Legislative Audit meeting did DOC Director Reg Michael tell Madame Chair Senator Dee Brown that the employee personnel files are missing? As stated, Director Michael said that when he first arrived, that he was told by the then-HR manager that "the DOC did not do personnel evaluations and that the entire state on Montana was moving away from personnel evaluations and personnel assessments." Director Michael connected with the Department of Administration and learned that this simply was not true. Why was the then-HR manager making this inaccurate claim?

Was he or she hiding, burying or destroying evidence that would identify individuals who are engaged in a ring of criminal behaviors by staff?

This committee can easily view the DOC segment of the Financial-Compliance meeting of the Legislative Audit Committee dated 12/09/2020 by clicking on this link (timestamps listed below for your convenience:

<http://sg001-harmony.sliq.net/00309/Harmony/en/PowerBrowser/PowerBrowserV2/20201228/-1/38115>

\* The DOC portion starts at timestamp 09:48:45. The question about staff personnel files was raised and responded to at timestamp 09:50:55.

Please consider all facets of the prism when reviewing the overall DOC budget request. I encourage inquiry into what behaviors the DOC is engaging in that has manifested in so many lawsuits and why these behaviors are continuing with such a high litigation price tag (and adverse morality consequence) to the State of Montana. Why does DOC legal perpetually claim to be "working on a new set of policies and procedures" but never releases these policies and procedures to inmates and to the public as required by DOC Policy 1.1.2 Policy Management System & 1.1.2A Policy Unit Standard Operations Procedure Guide? \*These are attached can be reviewed at:

<https://cor.mt.gov/Policy/Chapter1>

I am available for questions, information and insight via email and telephone.

Thank you in advance for your attentiveness as you synthesize the Section D budgets.

Laurie Little Dog  
Bozeman, Montana

The attached PDF documents include:

- 1) Statement of the US Department of Justice on the Institutionalized Persons Provisions of the Religious Land Use and Institutionalized Persons Act (RLUIPA)
- 2) RAC (Religious Activities Center) Meeting Minutes re: Religious Accommodations requests, Dated: August 2019.
- 3) DOC MSP Operational Procedure 4.4.1 added Section H: Hair Grooming "Use of force haircutting" (Section H: pages 6, 7, 8) Updated October 19, 2019. \*Unlawful and unequal treatment disproportionately targets Native American and Black population.
- 4) MT DOC Policy Directive 4.4.1, Dated: 10/1997, Revised 08/20/2013
- 5) Gmail to MSP warden inquiring why inmate was required to surrender his receipt copies of religious accommodation kite requests
- 6) Gmail to DOC, legislators and others pleading for inmates in Locked Housing and MDIU (Martz Diagnostic Intake Unit) to be granted immediate access to Religious Rights to pray for deceased relations and cellmates during mass COVID death.
- 7) DOC Policy 1.1.2 Policy Management System
- 8) 1.1.2A Policy Unit Standard Operations Procedure Guide



**STATE OF MONTANA  
DEPARTMENT OF CORRECTIONS  
POLICY DIRECTIVE**

Policy No. DOC 1.1.2	Subject: <b>POLICY MANAGEMENT SYSTEM</b>
Chapter 1: ADMINISTRATION AND MANAGEMENT	Page 1 of 4
Section 1: General Administration	Effective Date: May 1, 1996
Signature: /s/ Mike Batista, Director	Revised: 07/27/2015

## **I. POLICY**

The Department of Corrections develops and manages policy to meet statutory obligations, promote professionalism, and ensure consistency and operational compliance in fulfilling the purpose and mission of the Department.

## **II. APPLICABILITY**

All divisions, facilities, and programs Department-owned and contracted, as specified in contract.

## **III. DEFINITIONS**

Administrator – The official, regardless of local title (division or facility administrator, bureau chief, warden, superintendent), ultimately responsible for the division, facility or program operation and management.

Glossary of Terms – A compilation of standard definitions used in Department policy.

Policy Archives – The paper and electronic storage locations of all revised or obsolete Department, division, facility or program policies and procedures.

Policy Directive – A Department of Corrections internal management document that provides the standards by which Department divisions, facilities, and programs will operate.

Policy Unit – The office of the staff position located in the Quality Assurance Office that administers all policy-related matters for the Department to ensure policy and procedures are developed and managed in accordance with the provisions of this policy.

Policy Unit Standard Operations Procedure Guide – A manual containing procedural information including, but not limited to, development, implementation, and review of Department policies and procedures.

Procedure – An internal management document developed at the Department, division, facility, or program level that provides staff with direction on how to implement a Department policy, required action, or program.

Subject Matter Expert (SME) – The administrator or designated staff member, representing a division, facility, or program to coordinate with the Policy Unit to ensure accurate and timely policy review and revision.

## **IV. DEPARTMENT DIRECTIVES**

Policy No. DOC 1.1.2	Chapter 1: Administration and Management	Page 2 of 4
Subject: <b>POLICY MANAGEMENT SYSTEM</b>		

#### **A. Policy Management System**

1. Department policy guides all Department divisions, facilities, and programs.
2. The policy management system will govern the development, review, revision, and publication of all Department policy and corresponding procedures.
3. The Policy Unit establishes processes and requirements to manage the Department policy management system and oversees the functions of the Policy Unit; the responsibilities of the Policy Unit include, but are not limited to, the following:
  - a. develop policy to meet the Department director's goals and objectives and fulfill statutory requirements;
  - b. coordinate, track, and record the annual policy review;
  - c. serve as the primary resource for questions, concerns, and issues regarding policy;
  - d. provide training and assistance to staff assigned to review policy and develop procedures;
  - e. act as the central repository for all Department policy;
  - f. maintain a Policy Unit Standard Operations Procedure Guide; and
  - g. respond to employee and public requests related to Department policy.

#### **B. Policy and Procedure Access**

1. All Department policies and procedures are accessible to Department employees.
2. Department policies and procedures will be accessible to offenders and the public unless restricted based on a legitimate penological interest in accordance with the statutory authority of 2-6-102, MCA. The Policy Unit may grant non-Department employees access to restricted policies and division administrators may request access for non-Department employees by submitting a request to the Policy Unit.

#### **C. Policy and Procedure Requirements**

1. Department policy will be written in accordance with the standards outlined in *DOC 1.1.2A Policy Unit Standard Operations Procedure Guide*.
2. All procedures will be written according to standard formats and use language and definitions consistent with Department policy in compliance with the Policy Unit Standard Operations Procedure Guide unless the Policy Unit approves an exception.

#### **D. Review and Revision Process**

1. Administrators and subject matter experts (SMEs) are responsible for conducting an annual review of current Department policies in accordance with the annual review schedule.
2. SMEs will coordinate with the Policy Unit to ensure:
  - a. accurate and timely policy development, review, revision, and distribution; and
  - b. compliance of procedures with Department policy directives.
3. Department employees may comment or suggest revisions on Department policy at any time to the Policy Unit.

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4. The Policy Unit will review submitted comments, discuss potential revisions with affected division or facility administrators, when applicable, and consider the inclusion of recommendations into a revised policy.
5. In accordance with *DOC 1.1.2A Policy Unit Standard Operations Procedure Guide*, the Policy Unit will facilitate the consistent review of policies through the following primary revision processes:
  - a. annual review;
  - b. management team review;
  - c. changes elicited from a work group;
  - d. clinical review; and
  - e. union review.

#### **E. Policy Publication**

1. The Policy Unit will update and maintain a Policy News Page on the Internet and Intranet informing staff and public of new or revised policies.
2. Designated division and facility staff will ensure that all unrestricted procedures are published on the Department's Intranet website.
3. Administrators and supervisors will inform employees of policy and procedure changes and may require signatures to indicate employee awareness of new information; it is the responsibility of affected staff to read and understand the provided information.

#### **F. Records and Archives**

1. The Policy Unit, and designated division and facility staff are responsible for the permanent retention of their respective policies and procedures, and will maintain:
  - a. the original signed copies of all policies and procedures;
  - b. current policies and procedures in electronic format;
  - c. archived policies and procedures in electronic format and available to the Department's Legal Services Bureau staff;
  - d. a record of policy development, review, revision, and approval;
  - e. current and archived Department glossary of terms and medical glossary; and
  - f. archived notices of rescinded Department policy.

#### **G. Procedures**

1. The Department's Quality Assurance Office will monitor procedures and manuals to ensure compliance with Department policy.
2. Administrators and designated staff responsible for procedure management will:
  - a. ensure that procedures do not duplicate nor conflict with Department policy directives;
  - b. ensure that procedures provide details of how to implement Department policy;
  - c. provide staff attorneys with the opportunity to review procedures for potential risk or liability to the Department prior to final approval;
  - d. inform the Department's Policy Unit of all intended substantial modifications or

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additions to procedure;

- e. ensure procedures are reviewed, approved and signed by the authorizing administrator;
- f. conduct an annual review of restricted and unrestricted procedures;
- g. review policy revisions announced on the Policy News Intranet page;
- h. complete necessary revisions to corresponding procedures within 30 days of policy revision;
- i. ensure all approved new or updated procedures are posted on the Department's Internet website; and
- j. ensure relevant Department policy, procedures, and related information are maintained in operations manuals available to staff at designated facility locations.

## **V. CLOSING**

Questions concerning this policy should be directed to the Department's Policy Unit.

## **VI. REFERENCES**

- A. 2-6-102, MCA; 2-15-112, MCA; 53-1-203, MCA
- B. 4-4004, 4-4005, 4-4012, 4-4013, 4-4014; *ACA Standards for Adult Correctional Institutions, 4<sup>th</sup> Edition*
- C. 3-JTS-1A-17, 3-JTS-1A-18, 3-JTS-1A-19; *ACA Standards for Juvenile Correctional Facilities, 2003*
- D. *DOC Policy 1.1.1 Purpose, Mission and Management Philosophy*
- E. *DOC 1.1.2A Policy Unit Standard Operations Procedure Guide*

## **VII. ATTACHMENTS**

None



**DEPARTMENT OF CORRECTIONS  
MONTANA STATE PRISON  
OPERATIONAL PROCEDURE**

Procedure:	<b>MSP 4.4.1 INMATE HYGIENE, CLOTHING &amp; LINEN SUPPLIES</b>
Effective Date:	October 30, 1998 <span style="float: right;">Page 1 of 9 and no Attachments</span>
Revision Date(s):	July 1, 2007, July 12, 2009, October 14, 2009, January 1, 2011, April 16, 2013, October 15, 2019
Reference(s):	DOC Policy No 4.4.1
Signature:	/s/ Lynn Guyer / Warden

**I. PURPOSE**

To provide all inmates with the resources and facilities to maintain themselves in a clean and hygienic manner, and require them to do so. Inmate personal grooming appearance and hygiene habits will comply with appropriate safety, security, identification, hygiene, and sanitation standards.

**II. DEFINITIONS (none)**

**III. PROCEDURES**

**A. General Requirements**

1. Inmates are to keep themselves clean, neatly dressed, and well groomed, and conform their appearance to the standards set forth in this operational procedure. Inmates refusing to do so may be subject to appropriate disciplinary action and/or use of force protocols to gain compliance. Disciplinary action related to non-compliance may impact an inmate's classification and housing unit placement.
2. Staff, especially housing unit and work supervisors, are responsible for enforcing appropriate standards of personal appearance and cleanliness of the inmates.
  - a. Housing unit staff and work supervisors will monitor the appearance of the inmates they supervise on a daily basis.
  - b. If a staff member determines that an inmate's dress, grooming, and personal hygiene or appearance is inappropriate, the inmate will be required to remedy the problem. Failure to comply will result in disciplinary action in accordance with *MSP 3.4.1, Inmate Discipline*.
  - c. As noted below, in section B.11, inmates must at a minimum wear briefs while in their cell. When in the block or cube inmates must be wearing a t-shirt, briefs, and a pair of gym shorts or pants. Individual inmate housing unit rules outline the dress requirements for inmates going to and from the shower facilities.
  - d. In order to enable inmates to shower, perform bodily functions, and change clothing without nonmedical staff of the opposite gender viewing their buttocks, or genitalia, female custody staff are not to:
    - 1) Enter inmate shower and/or toilet areas.
    - 2) View inmates while they shower, perform bodily functions, and change clothes.

The only exceptions to this will be during circumstances when they are responding to signs that illegal or unauthorized activities may be in progress in these areas, or where such viewing is incident to the performance of other routine security duties.

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3. Inmates are encouraged to shower at least every other day, or in accordance with their housing unit showering schedule. Inmates may be ordered by staff to take a shower if their body odor becomes offensive. If an inmate violates this section, he may be ordered to submit to a shower. Failure to comply will result in disciplinary action in accordance with *MSP 3.4.1, Inmate Discipline*.

## **B. Clothing**

1. Admissions staff will issue each inmate the following state-owned clothing items during the admission process in the Diagnostic/Intake Unit:
  - a. Shirt
  - b. Pants
  - c. Briefs
  - d. Socks
2. Each inmate will be issued a parka when they leave the intake unit and enter general population housing. Unit staff will issue the following state owned clothing, linens, and bedding items to each inmate upon admission to a general population housing unit:
  - a. 2 pants
  - b. 2 shirts
  - c. 2 pair socks
  - d. 2 pair shorts
  - e. 2 blankets and sheets
  - f. 1 pillowcase
  - g. 1 towel
  - h. 1 washcloth
  - i. 1 jacket
3. Upon assignment to a locked housing unit/cell, staff will issue the following state owned clothing, linens, and bedding items to an inmate:
  - a. 1 scrub shirt
  - b. 1 scrub pant
  - c. 1 pair socks
  - d. 1 brief
  - e. 2 blankets
  - f. 1 set of two sheets
  - g. 1 pillowcase
  - h. 1 hand towel
4. The only items of personal clothing allowed for inmate retention are listed in *MSP 4.1.3, Inmate Personal Property*.
5. With the written approval of the Warden or designee an inmate's attorney may bring civilian clothing to the courthouse for the inmate to change into and wear during a court appearance. Transportation staff will thoroughly search this clothing prior to giving it to the inmate to change into. Transportation staff will have the inmate change into transport clothing prior to leaving the courthouse for return to MSP, and the civilian clothing will be returned to the attorney.
6. Inmates must be wearing a state issue shirt, state issue pant, a pair of footwear, briefs, and socks whenever they leave their assigned housing unit or are working a unit work assignment.



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7. Inmates may wear their personal sweatshirt in place of the state issued shirt and a pair of sweatpants or gym shorts in place of the state issued pants when attending gym or recreation yard. Headbands may only be worn to, from, and during scheduled recreation period at gym or yard.
8. Inmates are not allowed to wear their personal gym shorts, sweatpants, and/or sweatshirts underneath their state issued shirts and pants except when attending Native American sweat activities, to which they must wear gym shorts, which they are not allowed to remove.
9. Work supervisors may allow an inmate worker who is wearing a solid white cotton t-shirt underneath his state issue shirt to remove the outer shirt in hot work environments.
10. Work supervisors may allow an inmate worker to wear protective clothing over his state issued to prevent damage due to the nature of the work the inmate is performing. These will be approved by the Associate Warden of Security and MCE Administrator.
11. Inmates must be wearing a shirt, briefs, pants, a pair of footwear, and socks whenever they leave their assigned block or cube, and will not be allowed to remove any of these clothing items unless directed to do so by staff for search or exam purposes. Individual housing unit rules will outline when the shirt and pants must be state issue.
12. Inmates must at a minimum wear briefs while in their cell. Tank tops and/or pajamas are only authorized to be worn in cell. When in the block or cube inmates must be wearing a t-shirt, briefs, and a pair of gym shorts or pants. Individual housing unit rules will outline the dress requirements for inmates going to and from the shower facilities.
13. Inmates are to wear clothing that fits properly and is in serviceable condition. Inmate appearance standards prohibit:
  - a. Wearing pants in a manner causing them to sag.
  - b. Wearing clothing items that are over or under sized for the individual's body style (baggy clothing).
  - c. Wearing clothing items that have holes in them.
  - d. Wearing any style of dress that displays security threat group identification.
14. The baseball style hats sold by Canteen must be worn as designed – bill straight forward, not backward or angled to the side. Stocking caps purchased through the Canteen as personal property will only be allowed to be worn from September 1 through May 30. Stocking caps worn outside of this time period will be confiscated by staff, utilizing a disciplinary infraction report. Inmates are prohibited from wearing any other garment on their head, face, or neck (do-rags, neck scarves, headbands, etc.). WRC inmate workers may be authorized other headwear appropriate to their work assignment.
15. Gloves
  - a. The brown jersey gloves allowed for inmate purchase from Canteen are intended to provide protection to the hands from cold weather and certain work assignment activities. They will only be allowed to be worn from September 1 through May 30, and are limited as to when they can be worn as follows:
    - 1) When attending scheduled outdoor recreation yard.
    - 2) When actively working at an outdoor work assignment detail.
    - 3) While going to and from a work assignment at the industries compound.  
Inmates may not be wearing gloves when going to and from the industries dining hall, while inside the dining hall, or while being processed through the Change House or other security posts.
  - b. The fingerless weight lifting gloves allowed for inmate purchase from Canteen are intended to provide protection to the hands while the inmate is lifting weights.

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Inmates are allowed to have them on their person when going to and from gym, but the only time inmates are allowed to wear them is while they are lifting weights.

Inmates may not wear any gloves inside the unit or take their gloves to the dining halls, school, groups, infirmary, etc.

Gloves worn or found on an inmate in violation of the above allowances will be confiscated by staff, utilizing a disciplinary infraction report. Inmates are prohibited from wearing any other garment on their hands.

16. Certain seasonal clothing items will only be worn as needed during the respective season as determined by facility management (see language concerning headwear and gloves above). Certain seasonal clothing items may be issued to or collected from inmates when the seasons change (coats, parkas, etc.)
17. An inmate who alters or destroys any state issued clothing item will be held accountable through the inmate disciplinary process.

### **C. Laundry Services**

1. State owned/issued laundry pass procedures are established in each of the housing unit rules.
2. State owned/issued and personal laundry items will be laundered only at the facility central laundry. Personal laundry must be secured in the Laundry Loop assigned to the unit for laundry purposes.
- 3.
4. MSP may replace personal clothing items with state issued clothing based on security needs and cost factors.

### **D. Personal Hygiene**

1. Admissions staff will issue each inmate the following personal hygiene items during the admission process in the Diagnostic/Intake Unit:
  - a. Toothbrush/dentifrice
  - b. Comb
  - c. Deodorant
  - d. Shampoo
2. After initial issue of personal hygiene items, inmates must purchase hygiene items through the Canteen.
  - a. Typically, inmates who do not have funds should apply for indigent status to obtain personal hygiene items.
  - b. On a case by case basis housing unit staff will assist an inmate in obtaining necessary hygiene items.
3. General population inmates may keep up to four rolls of toilet paper they have purchased from Canteen in their cell, and unit staff will ensure there are sufficient quantities of toilet paper on hand to issue to inmates for normal use patterns.
4. Personal hygiene needs must not be denied as a form of punishment, indifference, or disciplinary reasons; however, they may be denied temporarily for safety and security reasons.
5. Inmates are required to brush and or clean their teeth and dentures regularly as required in order to protect and properly care for their teeth and practice appropriate sanitation of their mouth. Inmates should brush their teeth or dentures a minimum of once per day.

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## **E. Showers**

1. Showers will be available and required upon admission in the Diagnostic/Intake Unit. Inmates who refuse to shower upon initial admission will receive a use of force shower as determined by the Security Major or designee after consultation with mental and medical health services staff. Inmates will be given one opportunity to voluntarily submit to a shower prior to use of force.
2. Inmates are expected to shower/bathe routinely, in accordance with the environmental conditions of the season. For hygienic reasons, inmates are encouraged to shower at least every other day, or in accordance with their housing unit showering schedule. Inmates in special work assignments, such as food service or work assignments that require significant physical labor, are encouraged to bathe on a daily basis.
3. Inmates who fail to shower/bath at least once every seven days or whose body odor is such that it is offensive to staff or other inmates will be required to shower. The facility will develop a tracking mechanism for problem inmates to verify the time period elapsed and justification for a required shower. Unit staff will discuss with the inmate the reason for not showering/bathing as necessary and make a determination of whether it is a result of mental or medical health issue. For non-mental or medical health issues the inmate will be advised that he will be subject to an involuntary shower through the use of force as needed. The Security Major or designee will determine the method by which a use of force shower will be administered. If the inmate has mental or medical health issues, the appropriate staff will work with the inmate to gain compliance prior to any use of force.
4. In cases where an inmate has soiled himself or has spread food or human waste in a cell or other areas, he will be given the opportunity to voluntarily shower. Staff will not be required to wait the seven days before involuntarily showering the offender. If the inmate declines the opportunity to take a voluntarily shower he will be subject to a use of force shower.
5. In housing areas, showers of sanitary design with hot and cold running water will be available to inmates at least every other day on an established schedule.
6. Unit staff may modify an inmate's normal shower schedule if the inmate's behavior results in security/safety problems. Normal shower schedules may be modified during emergencies. Staff must document the reason for any modification.
7. Approved use of force showers will involve the following:
  - a. The inmate will be escorted to the shower stall using established escort protocols, including hands-on techniques when necessary.
  - b. The shower may be administered through the use of soap and warm water (not hot or cold) under low pressure from a hose or other device which provides for a proper cleaning of the inmate. Staff will not physically touch or scrub the inmate.
  - c. Staff will videotape all steps of use of force showers, especially the inmate's refusal to voluntarily shower, his escort/placement in to the shower stall, the showering process, and his escort/removal from the shower stall.
  - d. All standard use of force protocols will be followed.
  - e. Staff will document why the inmate was refusing to shower and the steps taken to gain compliance prior to the use of force.

## **F. Bedding**

1. Unit staff will issue inmates blankets that are appropriate to the climate and season.

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2. Unit staff will provide inmates the opportunity to exchange issued bed linens not less than once per week. The exchange schedule will be included in the housing unit rules. All exchanges of inmate bedding will be on a one for one basis. Inmates will be held accountable for any bedding altered or destroyed through the inmate disciplinary process.
3. Each mattress and pillow utilized by inmates will be sanitized with a liquid sanitizing solution prior to placement in storage and when reissued from one inmate to another. Facility staff may perform the function themselves, utilizing an approved sanitizing solution, or provide the sanitizing solution to the inmate occupant to clean the mattress and pillow himself.

#### **G. Sinks and Toilets**

1. Inmates will be provided access to a hand-washing sink with hot and cold running water and a flushable working toilet.
2. Fixtures will be of sanitary design, easily cleanable, and kept clean.
3. Work areas that require special sanitary conditions, or may expose inmates or employees to conditions requiring access to a shower, will provide such. These work areas may include food service, medical, shop areas, and industrial operations.

#### **H. Hair Grooming**

1. Inmates must keep their hair neat, clean, well-groomed and free of unpleasant odors at all times. Clean is defined as free of dirt, body oil, lice, ticks, nits, excessive dandruff or foreign substances.
2. The following head or facial hair styles are not permitted:
  - a. The sculpting of initials, lines, designs, patterns, letters, numbers or multiple parts.
  - b. Dyed hair.
  - c. Partially shaved heads.
  - d. Excessive braids, weaves, or dreadlocks.
  - e. Hairstyles that have been demonstrated to be an indicator of being a member or being identified with any security threat group.
  - f. Haircuts and styles which draw undue attention to an individual inmate or group of inmates.
  - g. Eyebrow removal or alteration, especially in a manner that draws undue attention to an inmate.
3. An individual inmate's hairstyle that is a fundamental tenet of his sincerely held religious belief, that has been approved and documented by the facility Religious Activities Coordinator and Security Major, will be authorized as long as his hair is capable of being searched in a reasonable period of time (less than three minutes) and does not present a health or safety hazard.
  - a. If an inmate wants a religious exception, he must fill out an OSR form, detailing the reason(s) why an exception should be granted, specifying the religion of which he is a believer, and detailing why he cannot comply with the hair grooming procedures and be adherent to his faith. The inmate must mail the OSR to the facility Religious Activities Coordinator and Security Major, who will check available records to validate whether or not the inmate has declared he is a

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member of the faith group and whether or not he has regularly and routinely attended the services of the faith group he has declared adherence to.

- 1) A religious declaration that is not sincerely held or documented will not justify an exception.
- 2) A belief that is secular (i.e. not religious in nature) will not justify an exception.
- b. The Religious Activities Coordinator and Security Major will evaluate the inmate's religious belief sincerity and conviction regarding hair, the compelling penological or government interests to deny/approve the request (such as hiding of contraband, time period for searches to occur, and poor hygiene) and approve or deny the request for an exception.
4. Staff may require an inmate to remove the bun, unbraid or untie his hair in order to complete an adequate security search, therefore inmates must keep their head and facial hair clean and groomed (cut and styled) in a manner that facilitates easy, timely, and uncomplicated searches by staff. Styles with thickly matted hair, that are too long, have too much hair, or that have intricate braiding and/or excessive braids, are not allowed because they take too much time (three minutes or longer) to search and/or remove a bun or unbraid, and do not facilitate easy, timely, and uncomplicated searches.
  - a. If it is determined that an inmate has too much hair, has hair that is too long, or has his hair in a style which has been identified as an indicator of an affiliation with a security threat group or which otherwise presents a security risk, the inmate will be required to change his hair style and/or submit to a haircut.
  - b. Supervisors will require inmate workers to keep their hair at a length or in a style appropriate to their work duties.
    - 1) Specific work assignments (e.g., industries and food service) require inmate workers to keep their hair at a length or in a style that meets safety and/or health guidelines.
    - 2) Supervisors will require inmate workers who are visible to persons from the public to keep their hair conservatively styled and cut to a length shorter than the top of their collar. Beards must be kept clean and neatly trimmed (up to 6" in length). Inmates who are employed must keep their head or facial hair in a manner that allows proper utilization of security/safety equipment for their assigned position.

Supervisors will advise the inmate workers on the standards and enforce them.
  - c. If an inmate has hair that hangs below the top of a shirt collar, he must keep it up in a bun, ponytail, or simple braid when he is out of his living quarters (cell or day room).
  - d. Inmates are allowed to grow sideburns, a beard and/or a mustache, but they must be kept clean, and neatly groomed, beards are permitted up to 6 (six) inches in length. Styles which draw undue attention to an individual inmate or group of inmates will not be allowed.
5. If an inmate violates a provision of this section of the procedure regarding hair, he will be instructed to shave or change his hairstyle and/or submit to a haircut. Failure to comply will result in progressive disciplinary action and/or use of force to accomplish compliance.
  - a. Criteria for use of force in accomplishing cutting of hair:

Procedure No. MSP 4.4.1	Subject: <b>INMATE HYGIENE, CLOTHING &amp; LINEN SUPPLIES</b>
Effective Date: October 15, 2019	p.8 of 9

- 1) Refusal by an inmate to shave or get a haircut when there is documentation in his health records that he has a contagious and/or unsanitary condition that warrants cutting of his head or facial hair.
  - 2) Refusal by an inmate to shave or get a haircut when there is documentation that the inmate has hidden contraband within his facial or head hair.
  - 3) Refusal by an inmate to shave or get a haircut when there is documentation that he has not complied with prior orders to shave or cut his hair due to having head or facial hairstyles that are not permitted and for which no religious exemption has been granted.
  - 4) Refusal by an inmate to shave or get a haircut when there is documentation that his hair cannot be searched in a timely and uncomplicated manner due to excessive braiding, thickly matted hair or other reasons.
- b. Procedures for hair cutting by use of force:
- 1) All documentation supporting use of force to shave or cut an inmate's hair will be reviewed by the Deputy Warden or Security Major prior to cutting of the hair.
  - 2) The assembled use of force team leader, on video, will give the inmate one last opportunity to submit to a shave or haircut without use of force and explain the consequences of non-compliance. If the inmate decides to submit to a non-use of force shave or haircut this will be videotaped with the appropriate documentation retained as evidence.
  - 3) A private, isolated location for implementation of use of force procedures related to hair cutting will be pre-determined and utilized.
  - 4) Staff engaged in the use of force shaving or hair cutting will employ the necessary bio-hazard precautions.
  - 5) Staff engaged in the use of force shaving or hair cutting will employ/apply restraints or physical force only as needed.
  - 6) Staff engaged in the use of force shaving or hair cutting will employ only properly sanitized electric shavers or hair trimmers to shave or cut the hair. Staff will not utilize an inmate (barber or otherwise) to conduct a use of force shaving or hair cutting.
  - 7) Staff engaged in use of force shaving or hair cutting will document by video and the completion of incident reports the entire use of force hair cutting process, especially the following:
    - a) Staff telling the inmate that this is his last opportunity to submit to a shave or haircut without use of force, and explaining the consequences of non-compliance.
    - b) The hands-on escort to the pre-determined location for the clipping and/or shaving and the compliance/restraining process utilized to place the inmate in a position to be clipped and/or shaved.
    - c) The clipping and/or shaving process.
    - d) The removal of the inmate from the restrained position, the escort to his assigned cell, and removal of necessary restraints.
- c. All standard use of force protocols will be followed.
- d. Staff will document why the inmate was refusing to shower and the steps taken to gain compliance prior to the use of force.

Procedure No. MSP 4.4.1	Subject: <b>INMATE HYGIENE, CLOTHING &amp; LINEN SUPPLIES</b>
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6. Barber service
  - a. At the Work Reentry Center and in each of the high security housing units, unit staff will assign an inmate unit worker to barber duties. The barber service will be provided in the unit.
  - b. Inmates housed within the Low Side Compound will have access to an inmate worker assigned to perform barber duties in the Low Support Building. A schedule of barber service times must be displayed in each of the housing units, and it must include times for inmates that work during the day to get barber services.
  - c. Procedures will be outlined for the control and accountability of barber equipment and supplies.
  - d. Inmate barbers will be given the parameters regarding allowed hairstyles for inmates and will cut inmates hair within those parameters only. Lack of compliance will result in loss of work assignment and appropriate disciplinary action for both the inmate barber and inmate receiving the haircut.

#### **I. Footwear**

1. Admissions staff will issue each inmate a pair of state owned lace less shoes during the admission process in the Martz Diagnostic/Intake Unit. If an inmate arrives with a pair of personally owned shoes/footwear admissions staff will ask the inmate if he wants to mail them to someone or have them disposed of. If the inmate chooses to mail them out the mailing fees will be paid by the facility or the IWF.
2. Locked Housing unit staff will issue a pair of state owned lace less shoes to each inmate during the unit intake process, and place the inmate's personal or state issue shoes with the rest of his property that is in storage. The Unit Management Team may approve identified inmates to purchase personally owned footwear with Velcro or lace less closure.
3. Once a year an inmate in general population housing may request a pair of state owned footwear. Unit staff will order him a pair if:
  - a. He does not have an adequate pair of shoes.
  - b. His personal footwear do not provide adequate protection for his feet with the work he is performing in his current work assignment.
  - c. The footwear limit for inmates is established as outlined in *MSP 4.1.3, Inmate Personal Property*.

- J. When a significant change occurs in an inmate's appearance a new identification card shall be made. See *MSP 3.1.107, Inmate ID Cards*.

#### **K. Inmate Living Quarters**

1. Areas in which inmates are housed will be maintained in a clean and sanitary condition.
2. Housing unit rules must require inmates to keep their living quarters/areas in a neat and sanitary condition.
3. Each Housing Unit Management Team will determine the methods used for cleaning, the cleaning schedule, and a regular inspection schedule.
4. Housing Unit Management Teams will ensure inmates have access to cleaning supplies as determined by housing unit post orders.

Procedure No. MSP 4.4.1	Subject: <b>INMATE HYGIENE, CLOTHING &amp; LINEN SUPPLIES</b>
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5. If an inmate fails to abide by personal or living quarter cleanliness standards, he will be subject to disciplinary action.

#### **IV. CLOSING**

Questions concerning this operational procedure will be directed to the Associate Warden responsible for the inmate housing units.

#### **V. ATTACHMENTS (none)**





Laurie Little Dog <laurielittledog@gmail.com>

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## Unauthorized retrieval of Religious Accommodation Forms?

2 messages

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**Laurie Little Dog** <laurielittledog@gmail.com>

Thu, Sep 26, 2019 at 9:18 PM

To: "Guyer, Lynn" <lynn.guyer@mt.gov>

Bcc: Matthew Campbell <mcampbell@narf.org>

Hi Warden Lynn Guyer,

I am writing to you to find out who the woman was who visited Gabriel Little Dog's Locked Housing 2 cell yesterday 9/25 and took his two Religious Accommodation Forms from him? As I discussed in-person at the Prison Issues Board meeting on Tuesday, September 24, 2019 in Glendive, Montana, these two Religious Accommodation forms included two (denial) replies, of Gabriel LittleDog's requests for 1) the possession of sacred religious items [botanical(s): sweet pine] and 2) permission to pray [smudge] outdoors in accordance with his sincerely held spiritual beliefs.

The woman was escorted by a male guard and visited Gabriel's cell yesterday, 9/25, in the morning hours. This woman inquired if Gabriel had in his possession his Religious Accommodation requests and the RAC denial responses. She took with her, his forms and stated that she would return them to him in one week. Gabriel was returned only one copy of one of his Religious Accommodation request forms but it was without Terri Stefalo's reply.

The LHU2 logs should identify who visited Gabriel and for what purpose. Perhaps the woman who visited Gabriel was Terrie Stefalo? Was this an authorized retrieval of his paperwork? Please reply.

Hopefully the RAC is indeed reconsidering their decision to deny his Religious Accommodation requests. It is very concerning and has us very uneasy about not knowing 'who' that woman was. If it was indeed 'authorized', why did they take his originals forms??

Wouldn't they have their own carbon copies that they could re-respond to? This is all very frustrating because she should have photo copied the original and taken a copy.

Gabriel has been needing to prepare legal mailings (ie: making copies of these forms for the attorney) but with Montana State Prison prohibiting him from accessing the legal library, making use of the photo copier and keeping him from making legal calls, it feels very overpowering, And he cannot just tell the guard, "No, that he's not gonna give up his originals". Because then he would be given another write-up for insolence.

Gabriel's mental health continues to be deteriorating, and he cannot handle anymore of the disciplinary abuse at the facility.

It feels like they have taken from him his only means of advocating for his spiritual believes. It is all he has. Why did they take those forms from him? Why couldn't they just keep a copy and leave him the originals? Please resolve these difficult Religious Accommodation matters and also resolve the issues with his lack of legal access.

Sincerely,

Laurie Little Dog  
(505) 660-5678

**Laurie Little Dog** <laurielittledog@gmail.com>  
To: "Guyer, Lynn" <lynn.guyer@mt.gov>  
Bcc: Matthew Campbell <mcampbell@narf.org>

Fri, Sep 27, 2019 at 7:08 AM

Correction/ clarification: The form that was retrieved from Gabriel's cell on 9/25 was the informal resolution form, from back when he was 'in' MDIU, but at that time he was sitting in LHU. In that informal grievance form, Gabriel addressed his Religious needs in both MDIU and in Locked Housing. At that time the informal grievance was written, Gabriel was being subjected to lengthy confinement in both MDIU and in Locked Housing. Gabriel's practice of his spirituality was then and remains to be critical in his coping with the intense isolation and acute and unrelenting stresses that he is being subjected to at MSP.

When Gabriel asked the woman where the original informal resolution form was from MDIU/ LHU, she said it was not on file and she did not come across it. This is what was taken from him by her. Like we said earlier, it is very concerning that the woman would just come and take his original. Why didn't she just photocopy it and return it? Why did she say that she was going to take it for an entire week? Please see that he is returned this form.

Later, in that same 9/25 conversation, the woman returned to Gabriel the carbon copy of an offender grievance form that he wrote to MSP on 9/18/19.

The carbon copy of that 9/18 form had no reply from Terrie Stefalo on it. No response signature on it & no date. The response area was just blank. Why did the woman return this to Gabriel without a response of any kind?? Gabriel still needs that 9/18 offender grievance form to be formally addressed. The carbon copy of that form seems to have been returned to him prematurely.

Mr. Guyer, I hope this clarifies all potential confusions from my previous email.

Thanks,  
Laurie LittleDog

[Quoted text hidden]



Laurie Little Dog <laurielittledog@gmail.com>

## Urgent: Religious accommodations for all natives regardless of housing classification

Laurie Little Dog <laurielittledog@gmail.com>

Thu, Oct 15, 2020 at 11:41 AM

To: "Michael, Reg" <reginald.michael@mt.gov>, "Trombley, Harlan" <htrombley@mt.gov>, "tstefalo@mt.gov" <tstefalo@mt.gov>  
Cc: "Bell, Molly (Tester)" <molly\_bell@tester.senate.gov>, "Bullock, Governor" <governor@mt.gov>, "Casey.Knudsen@mtleg.gov" <Casey.Knudsen@mtleg.gov>, Citizens Advocate <citizensadvocate@mt.gov>, "Hsmith2@mt.gov" <Hsmith2@mt.gov>, "JHansen2@mt.gov" <JHansen2@mt.gov>, Jade Bahr <Jade.Bahr@mtleg.gov>, "Jason.Small@mtleg.gov" <Jason.Small@mtleg.gov>, Jen Gross <Jen.Gross@mtleg.gov>, Josh Butterfly <butterflyjosh4@gmail.com>, Kevin Allis <kallis@ncai.org>, "Kfouts@mt.gov" <Kfouts@mt.gov>, "Rae.Peppers@mtleg.gov" <Rae.Peppers@mtleg.gov>, "SRay2@Mt.gov" <SRay2@mt.gov>, "Salmonsens, Jim" <jisalmonsens@mt.gov>, Senator Jon Tester <senator@tester.senate.gov>, "Sharon.StewartPeregoy@mtleg.gov" <Sharon.StewartPeregoy@mtleg.gov>, "Smith, Jason" <jsmith@mt.gov>, "alandoane@midrivers.com" <alandoane@midrivers.com>, "clairena@hughes.net" <clairena@hughes.net>, "dan.salomon@mtleg.gov" <dan.salomon@mtleg.gov>, "ggray@gng.net" <ggray@gng.net>, "jeford@mt.gov" <jeford@mt.gov>, "jennifer\_romero@indian.senate.gov" <jennifer\_romero@indian.senate.gov>, "joeread2019mt@gmail.com" <joeread2019mt@gmail.com>, "mbc.84@icloud.com" <mbc.84@icloud.com>, "parenteaurichard@yahoo.com" <parenteaurichard@yahoo.com>, "pete.bludworth@corecivic.com" <pete.bludworth@corecivic.com>, "steven.smallsalmon@cskt.org" <steven.smallsalmon@cskt.org>, "tyoung@mt.gov" <tyoung@mt.gov>  
Bcc: SK Rossi <rossis@aclumontana.org>

Gentlemen,

After visiting DOC headquarters yesterday, the office of Indian affairs, and the governors office I am reaching out once again urgently for swift action in Montana prisons with regard to religious accommodations not being available. This is a long-standing issue that remains unresolved. It needs to be worked out.

Right now, we have tribal members whose immediate family have died. Returning to the reservation for a funeral will be complicated due to the virus. It is **necessary** for inmates to have in their in-cell possession the medicine bag and religious botanicals in order to pray during this time of crisis. There is a need to pray for their relatives that are returning to the ancestors and for the people who are sick and for the virus as it overtakes the Prisons facilities.

I feel incredibly frustrated and rather humiliated that we still are in a holding pattern after all the letters and presentations I have made on this matter to the Prison issues board, to the law and justice in term committee and to both of you personally.

I understand that Prison officials are "busy" yet they've always been busy... for the years that I have been trying to get this fixed.

Native people must be given their religious right to pray in their way especially during the crisis. Prayer is not a threat to security. There are plenty of laws in place to protect this right. We are in a crisis and I don't wanna hear any more excuses we just need to move forward with the resolution.

Please call me. I do request a tangible resolution to this. All housing classifications including locked housing need to be able to do this. We're not throwing anything new into the mix. This is a desperate situation. This is not secondary or an afterthought to the outbreak. This should have been accommodated prior to the crisis. Now that this nightmare has unfolded there is nothing.

We recognize that the community sweats and community based religious programming is canceled. But again I ask why is it that native people can't practice spirituality independently, not in a group? Access to independent prayer and the ability to smudge. It's necessary.

I don't understand why it's so hard to fulfill this request.

Tensions are high.

We need resolution.

We need some understanding and humane treatment. Can you imagine... Being locked up and getting the news your mother or child just died and you can't even properly pray let alone attend a funeral!?!

Please recognize that due to down/ quarantine In the prisons and lack of access to phones to process emotionally this with relatives... this situation is negatively compounded.

I recognize this is a crisis. We also recognize that these religious accommodations are necessary. We have been asking the DOC to cooperate on this for a very long time.

This is not only for Montana State prison but for all of the secure facilities. Even those that are under contract, we need to unify and ensure that we get Swift access to religious botanicals for in-cell possession and outdoor prayer regardless of housing classification.

Please do respond with a reasonable resolution.  
please do respond with a reasonable resolution.

Respectfully,  
Laurie Little Dog



**STATE OF MONTANA  
DEPARTMENT OF CORRECTIONS  
POLICY DIRECTIVE**

Policy No. DOC 4.4.1	Subject: <b>OFFENDER HYGIENE, CLOTHING, AND LINEN SUPPLIES</b>
Chapter 4: Facility/Program Services	Page 1 of 4
Section 4: Sanitation and Hygiene	Effective Date: Oct. 1, 1997
Signature: /s/ Mike Batista, Director	Revised: 8/20/2013

**I. POLICY**

The Department of Corrections will provide offenders with the resources and facilities to maintain personal cleanliness and a supply of clothing, bedding, and linens sufficient to provide comfortable, sanitary, and environmentally suitable conditions during confinement.

**II. APPLICABILITY**

All divisions, facilities, and programs Department-owned and contracted, as specified in contract.

**III. DEFINITIONS**

Administrator – The official, regardless of local title (division or facility administrator, bureau chief, warden, superintendent), ultimately responsible for the division, facility or program operation and management.

**IV. DEPARTMENT DIRECTIVES**

**A. General Requirements**

1. Each facility will establish offender hygiene and personal care procedures in accordance with the provisions of this policy.
2. Facilities will allow offenders freedom in personal grooming as long as their appearance does not conflict with the facility's safety, security, identification, and hygiene regulations. Grooming requirements may be more restrictive in specific training programs.
3. Procedures will address the re-issue of new identification photographs whenever an offender's personal appearance substantially varies from a current photograph.
4. Facilities must ensure that no civilian clothing or staff uniforms are stored in a manner that allows offender access to them.
5. The facility's supply of clothing, bedding, and linen will exceed the amount required for the offender population to prevent any delay in replacing items.
6. The facility will provide secure storage for offender clothing, bedding, and linen and establish accountability procedures for their issue and use; offenders are responsible for all issued or permitted items.

**B. Hygiene Items**

Policy No. DOC 4.4.1	Chapter 4: Facility/Program Services	Page 2 of 4
Subject: <b>OFFENDER HYGIENE, CLOTHING, AND LINEN SUPPLIES</b>		

1. Each facility will:
  - a. provide newly admitted offenders with an initial supply of personal hygiene items that may be replenished by offenders through the facility canteen or through indigent requests in accordance with *DOC Policy 4.1.4, Indigent Status*;
  - b. provide youth offenders at a youth facility with personal hygiene products for the duration of the youth's stay;
  - c. supply the following basic items to offenders upon admission:
    - 1) toothbrush;
    - 2) toothpaste or powder;
    - 3) soap and shampoo;
    - 4) comb;
    - 5) shaving implements; and
    - 6) feminine hygiene items, when applicable.
  - d. ensure that the type and amount of personal hygiene items complies with established procedures for offender personal property; and
  - e. when necessary, restrict personal hygiene items due to security concerns in mental health, segregation, and intensive management units.

### **C. Personal Hygiene**

1. Each facility will:
  - a. require offenders to trim and maintain head and facial hair in a clean and neat manner and not endanger safety or security, especially during offender searches;
  - b. ensure hair length meets safety, health, and OSHA guidelines related to specific job assignments, e.g., industries and food services;
  - c. ensure fingernails are kept at a length that does not present safety or security concerns; and
  - d. provide hair care services that:
    - 1) comply with applicable health requirements;
    - 2) employ an individual skilled in haircutting;
    - 3) ensure observation by staff; and
    - 4) require that haircutting equipment is securely stored when not in use.
2. Facility staff may require an offender to unbraid, untie, or cut the hair in order to complete an adequate security search.
3. The facility administrator may restrict individual hair length and styles if they are deemed to present a security risk.

### **D. Showers**

1. Each facility will:
  - a. require offenders to shower upon admission to the facility;
  - b. afford the opportunity for offenders to shower at least three times per week;
  - c. recommend that offenders with specific job assignments, e.g., food, medical, or industrial services, adhere to a daily showering schedule; and
  - d. document when offender access to showers is curtailed for any reason.

Policy No. DOC 4.4.1	Chapter 4: Facility/Program Services	Page 3 of 4
Subject: <b>OFFENDER HYGIENE, CLOTHING, AND LINEN SUPPLIES</b>		

2. The facility administrator, or designee, may require an offender to adhere to a showering schedule.

#### **E. Clothing**

1. The facility will issue appropriate clothing to newly admitted offenders.
2. Facility procedures will address the disposition of offender clothing that may not be retained at the facility and provide the resources for a thorough cleaning, disinfecting, and storage of personal clothing if needed.
3. Offenders' personal clothing limits will be consistent with *DOC Policy [4.1.3, Offender Personal Property](#)*, and facility authorized property lists.
4. Each facility will provide offenders with information regarding clothing issue, exchange, and repairs, including the opportunity to obtain three complete sets of clean clothing per week.
5. Offenders will wear clothing appropriate for the season and in the manner for which it was designed.
6. The facility will provide offenders with suitable protective clothing as required for specific job assignments and work details.
7. If the facility allows relatives, attorneys, or friends to provide civilian clothing for an offender's court appearance, staff must use appropriate search and receipt procedures.
8. Unauthorized clothing will be considered contraband and an offender's possession of unauthorized clothing may subject the offender to a disciplinary violation for possession of contraband.

#### **F. Bedding**

1. Standard issue bedding will include one mattress, one pillow, one pillowcase, two sheets, and two blankets with allowance for seasonal variations.
2. Facilities will provide bedding and linen exchange no less than once a week.
3. Mattresses and pillows will remain in the housing units and sanitized when assigned to another offender.
4. The facility administrator may restrict bedding supplies for individual offenders where there is evidence of a security risk.
5. Medical services may approve other bedding for medical reasons.

#### **G. Laundry**

1. Facility procedures will include a laundry exchange schedule that ensures all offenders have the means to obtain clean clothing and linens; procedures will address a schedule for offenders in locked housing units.
2. Facilities will ensure blankets and pillows are cleaned every three months.

Policy No. DOC 4.4.1	Chapter 4: Facility/Program Services	Page 4 of 4
Subject: <b>OFFENDER HYGIENE, CLOTHING, AND LINEN SUPPLIES</b>		

3. Facility procedures will address the replacement of worn out, lost, or stolen items. Offenders may be required to reimburse the facility for issued items that are lost, stolen, or damaged.

## **V. CLOSING**

Questions concerning this policy should be directed to the facility administrator.

## **VI. REFERENCES**

- A. 4-4283; 4-4334 through 4-4343; *ACA Standards for Adult Correctional Institutions, 4<sup>th</sup> Edition*
- B. 4-4336, 4-4340; *ACA 2008 Standards Supplement*
- C. 3-JTS-3D-08, 3-JTS-4B-07 through 3-JTS-4B-15; *Standards for Juvenile Correctional Facilities, 2003*
- D. *DOC Policies 4.1.3, Offender Personal Property; 4.1.4, Indigent Status; 4.4.2, Facility Sanitation and Pest Control*

## **VII. ATTACHMENTS**

None.



Procedure No. DOC 1.1.2A	Effective Date: 11/28/11	Revised: 12/07/2020
Signature: /s/ Kurt Aughney		Position Title: Quality Assurance Director



# **POLICY UNIT STANDARD OPERATIONS PROCEDURE GUIDE**

## **APPLICABILITY**

All divisions, facilities, and programs of the Department of Corrections.

## **POLICY UNIT STANDARD OPERATIONS PROCEDURE GUIDE**

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### Attachments:

[Annual Policy Review Flowchart](#)

[Glossary of Terms](#)

[Management Team Policy Revision Flowchart](#)

[Notice of Rescission](#)

[Policy/Procedure Legal Review Flowchart](#)

[Policy Review Guidelines](#)

[Policy Directive Format](#)

[Policy Unit Memorandum](#)

[Procedure Format](#)

[Work Group Policy Revision Flowchart](#)

## **I. INTRODUCTION TO DEPARTMENT OF CORRECTIONS POLICY**

### **A. Department Policy at a Glance**

The Department of Corrections (Department) develops and manages policy to meet statutory obligations, promote professionalism, and ensure operational compliance and consistency in fulfilling the purpose and mission of the Department. Department policy is designed to adhere to federal and state law, guidelines outlined in the Montana Operations Manual, and follow the best practices established by national correctional entities.

The purpose of Department policy is to create an overarching guide that empowers the divisions, facilities, and programs in creating specific procedures custom-made for unique complexities and needs. Divisions, facilities, and programs will write procedures in accordance with Department policy to provide legal protection, comply with state and federal mandates and national correctional association practices, and to ensure the Department is operating with a cohesive mission.

### **B. Department Policy Unit**

The Department Policy Unit is a designated policy manager located within the Department's Quality Assurance Office.

Responsibilities of the Department Policy Unit include, but are not limited to:

- a. develop policy to meet the Department director's goals and objectives and fulfill statutory requirements;
- b. coordinate, track, and record the annual policy review;
- c. serve as the primary resource for questions, concerns, and issues regarding policy;
- d. provide training and assistance to staff assigned to review policy and develop procedures;
- e. act as the central repository for all Department policy;
- f. maintain a Policy Unit Standard Operations Procedure Guide;
- g. respond to employee and public requests related to Department policy; and
- h. aid the Department in ensuring consistency with local procedures and policy directives.

## **II. OVERVIEW OF DEPARTMENT POLICY**

### **A. Access**

#### **1. Unrestricted**

Department policies will be accessible to the public in accordance with *Montana Code Annotated Title 2, Section 6. Public Records*, unless public access to policies creates a direct security threat to personnel or the safe operation of a facility/program.

Unrestricted policies are available to the public and published on the Montana Department of Corrections Internet page ([cor.mt.gov](http://cor.mt.gov)) immediately upon revision.

Unrestricted policies are available to Department employees on the Department Intranet page (cor.mine.mt.gov), in addition to the public access Internet page.

## **2. Restricted**

Department policies may be restricted from the public based on a legitimate penological interest. The Department must be able to articulate exactly how public knowledge of a policy may compromise the safety, security, good order, or administration of a facility or program. Restricted policies are designated as such after a legal review and consensus from Subject Matter Experts (SME's).

Restricted policies are designated as restricted by "Restricted Distribution" watermarks in the body of the policy and the acronym "RD" placed in red font next to the title. These policies are available to Department employees on the Department Intranet but not published on the Internet.

Procedures and policy attachments may be restricted from public access when a Department policy is designated as unrestricted; procedures and attachments often contain specific information that may pose a greater threat than the general information provided in a policy.

## **B. Organization**

### **1. Chapters**

Policies are organized within five chapters based on content. The five chapters include:

1. Administration and Management
2. Physical Plant
3. Facility/Program Operations
4. Facility/Program Services
5. Offender Programs

Each of the five policy chapters are broken into subsections organized by policy content. All policy chapters are listed with subsections on the Department website.

## **III. POLICY AND PROCEDURE FORMAT GUIDELINES**

### **A. Introduction**

Format guidelines bring uniformity in appearance to all Department policies and local procedures.

Procedures will be written according to the [Operational Procedure Format](#). Procedures will reflect a titling and numbering system consistent with Department policy. The policy unit must approve any deviation from standard formats, titles, or numbering prior to publication.

The Department [Policy Template](#) provides a sample format for staff to follow while offering revisions or suggesting a Department policy. Use of this format ensures consistency on style, margins, and spacing and assures that text revisions can be made

interchangeably and efficiently. The following specifications for a standard policy outline will be used for all policies:

## **B. Basic Formatting**

Department policies and procedures will follow a standard outline format including the following rules:

- a. Upon revision, a policy will reflect the revision date on the first page heading of the policy.
- b. Text will be Times New Roman or Calibri font, size 12.
- c. Organization will be labeled by icons included in the Department Policy Template such as: I., A., 1., a., 1), i., etc.
- d. Major headings will follow Roman numerals in bold, capital letters.
- e. Secondary headings will follow capital letters in bold.
- f. Paragraph body will be single-spaced.
- g. A double space will be inserted between each paragraph, font size 8.
- h. Terms itemized under DEFINITIONS will be formatted according to the following:
  - i. bolded followed by a space and dash prior to definition;
  - ii. language will be specific, clear, and concise;
  - iii. standard definitions listed in the Department's Glossary of Terms will be used to the extent possible; and
  - iv. definitions will be listed alphabetically.
- i. References will be italicized.

## **C. Organization and Content**

The policy body outline is organized by sections with specific purpose and content. Guidelines pertaining to each section include:

### **I. POLICY**

Each Department policy will contain an introductory statement of philosophy and purpose. Examples of policy statements may be found in the *American Correctional Association Manual: Guidelines for the Development of Policies & Procedures (1991)*.

### **II. APPLICABILITY**

This section provides guidance as to which divisions, facilities, programs, or combination thereof will be required to adhere to the policy.

### **III. DEFINITIONS**

Standard definitions will be used whenever possible. A Glossary of Terms provides guidance for Department adopted terms to be used in procedures. The Glossary of Terms will be available on the Intranet and upon request at all times.

### **IV. DEPARTMENT DIRECTIVES**

The guiding standards provided by the policy will be stated within this section. Directives will be written in outline style to provide clear and concise communication of standards.

Directives will be written in an “active voice” providing guidance and delineating authority between administrators, designated individuals, and staff.

Requirements outlined by a policy will be written using terms such as: will, must, and may. Terms “will,” “will not,” “must,” or “must not,” communicate that requirements are mandatory. “May” is a permissive term that allows for discretion.

## **V. CLOSING**

The standard closing statement will begin, “Questions concerning this policy should be directed to” followed by an administrator, or designee, ultimately responsible for the content of the policy.

## **VI. REFERENCES**

References will include citation for content that provided guidance in the development of a policy.

Policies designed to adhere to Montana Code Annotated, Federal law, case law, or the Montana Operations Manual will cite the applicable statutes or policies in the References section.

When a policy has been designed to comply with the American Correctional Association, National Commission on Correctional Health Care, or other identified best practices, they will be cited.

## **VII. ATTACHMENTS**

The Attachments section is designated for forms, additional information, or flowcharts relevant to a policy; content will be hyperlinked into the body of the policy and available on the Policy/Forms Page.

The policy unit is not responsible for maintaining division specific forms.

## **IV. POLICY DEVELOPMENT PROCESS**

### **A. Developing Policies**

There are four basic reasons for development of policies:

1. Operational Needs – policies and procedures ensure fundamental processes are consistent.
2. Risk Management – policies and procedures are a control and oversight tool to manage risk.
3. Continuous improvement – policies and procedures improve current practices through annual reviews and important internal communication practices.
4. Compliance – well-defined and documented processes demonstrate an effective internal control system that complies with regulations and standards.

## **B. Development of New Additions**

The development process begins with research and consultation with SMEs and administrative staff and ends with a concise addition to the Department policy system.

### **1. Research**

Preliminary research includes inquiries and requests to state correctional agencies within the northwest region, research may be expanded to include all other states. Research often includes identifying effective processes used in other states, using national agency standards archetypes, and identifying similar processes within the private industry. State correctional agencies publish many policies through public Internet pages in accordance with the [Freedom of Information Act](#).

### **2. Draft**

When preliminary research concludes, a policy is drafted by the Policy Unit for review by SMEs representing divisions, facilities, or programs that may be directly affected by the policy.

Input from SMEs often results in a revised draft of the new policy. When a final draft is complete, the new policy will be submitted for a general review.

### **3. General Review**

The general review will be sent via email to the general review distribution list. Recipients will be provided a minimum of 10 business days to review the material and submit suggestions.

When a 10 business day period concludes and significant and necessary suggestions have been submitted, a draft representing the recommended changes will be made. The Policy Unit may re-submit the draft in the next month's General Review or move forward with the Legal Review at the Unit's discretion on a case-by-case basis based on the significance of the revision from the previously submitted draft.

### **4. Legal Review**

At the conclusion of the General Review, the Unit will submit the new policy via email to [CORLegalMailbox@mt.gov](mailto:CORLegalMailbox@mt.gov) for legal review; a minimum of 10 business days will be provided to present feedback.

### **5. Director Review and Signature**

Once a legal review has been completed the final draft will be summarized in a [Policy Unit Memorandum](#) and submitted to the director for appraisal and signature.

New policy additions will be published upon signature and approval by the director. Policies may be published on the Department Policies Index and Policy News Pages on the Internet and Intranet.

## **C. Review Processes**

## **1. Annual Review Process**

The Department of Corrections completes an annual review of policies in accordance with national best practices and American Correctional Association recommendations. A SME review and input from employees throughout the Department allow for flexible policies that meet the individual needs of each division, facility, and program while providing necessary guidance.

Each year the Department Policy Unit creates an annual review schedule outlining the months in which policies will be reviewed. The annual review schedule may be obtained from the Policy Unit. Department policy reviews subsequently result in division, facility, or program procedure reviews. The [Annual Policy Review Flowchart](#) illustrates the following process.

Department administrators and staff may utilize the [Policy Review Guidelines](#) as a resource for guidance to ensure the efficient execution of the annual review.

### **a. Policy Unit manages monthly scheduled reviews**

Each month the Policy Unit notifies the annual review distribution list of the policies under review for the current month. A minimum of 10 business days is provided for the annual review. The individuals included in the annual review distribution list are responsible for disseminating the policy review information to SMEs and other applicable staff at the local division, facility, or program.

### **b. SMEs provide feedback within ten days**

SMEs are responsible for providing feedback or requesting an extension to the Policy Unit within the period provided. The Policy Unit will grant an extension period to those individuals who have been unable to provide revision suggestions upon request.

Feedback and language suggestions are maintained in order to ensure that all recommendations are considered.

### **c. Draft necessary changes**

After the 10 business day period has concluded, if no extension has been requested for a policy and no feedback was received, the policy will be scheduled for review in 12 months and no changes will be made. When no changes are required, the annual review schedule will be updated to reflect the most current review date.

If the policy requires unsubstantial formatting, grammar, or reference updates, the policy will be published without general or legal review and may or may not require the director's signature depending on whether the acting director's signature is on the policy being revised. After publication, the annual review schedule will be updated to reflect the most current review date.



When a 10 business day period concludes and significant and necessary suggestions have been submitted, a draft with the recommended changes will be created and prepared for general review. When necessary, the Policy Unit will confer with the SME requesting changes to ensure that the draft reflects recommendations accurately.

**d. Completed draft is submitted for General Review**

The Policy Unit will submit significant policy changes to the general review distribution list for a minimum of 10 business days for General Review.

The General Review notification email will include:

- a. a list of the revised policies with a summary of changes for each policy;
- b. drafts will be attached with tracked changes, unless changes are so numerous that a clean draft will ensure better review;
- c. if a clean draft is attached, a draft with tracked changes will be offered upon request; and
- d. revised attachments will be included as needed, as determined by the Policy Unit.

When a 10 business day period concludes and significant and necessary suggestions have been submitted, a draft representing the recommended changes will be made. The Policy Unit may re-submit the draft in the next month's General Review or move forward with the Legal Review at the Policy Unit's discretion on a case-by-case basis based upon the significance of changes reflected in the most recent draft.

**e. Legal Review process**

In order to ensure that the Department's resources are used efficiently, the Policy Unit will use the [Policy/Procedure Legal Review Flowchart](#) to determine whether a policy requires a Legal Review before submission to the director for review and signature. If a Legal Review is clearly unnecessary, the Policy Unit may move directly to subsection (f) below. A Legal Review will be required for policies containing criteria including, but not limited to, the following elements:

- a. The policy is a new implementation;
- b. The policy draft includes substantive changes resulting in a change of meaning or intent;
- c. The policy is likely to result in an employee termination or discipline;
- d. The policy is likely to result in offender grievances; or
- e. The policy may require defense in court or implicates constitutional rights such as speech, religion, or due process.

When the Policy Unit determines that a policy requires a Legal Review, the reviewing attorney will be provided a 10 business day review period in which to express concerns or provide feedback. At the expiration of the review period, any received suggestions will be incorporated into the current draft.

**f. Director's Review**

The policy draft that has completed Annual Review, General Review, and Legal Review, will be submitted to the director for review and signature. The Policy Unit will complete a [Policy Unit Memorandum](#) prior to submission to the director.

The [Policy Unit Memorandum](#) will list each policy submitted for the director's review and signature including a summary of the changes that have occurred.

Any suggestions or recommendations from the director will be immediately implemented and the policy will be resubmitted for approval.

**g. Finalize and Publish**

Upon receipt of the director's signature, a policy will be published on the Department Policies Index Pages on the Internet and Intranet.

Corresponding procedures should be drafted and prepared for necessary reviews within thirty (30) business days following the publishing of a revised Department policy.

**2. Leadership Team Review Process**

Policy revisions will be made at the discretion of the Leadership Team, when necessary, without an opportunity for input by staff.

**a. Drafts**

When a request for policy change is submitted to the Policy Unit, revisions will be drafted in consultation from the requesting Leadership Team members.

**b. Revisions**

Once a draft is agreed upon by the requesting team members, the draft will be submitted to the Legal Unit for review.. When significant revisions are made during a policy change, a General Review may be utilized at the discretion of the Leadership Team prior to the Legal Review.

**c. Signature and Publication**

When a policy is revised with current definitions, formatting, or unsubstantial changes, the director's signature is not required unless the current director's signature is not on the policy that is being revised.

After a Leadership Team Review and Legal Review, when necessary, have been completed, the draft will be submitted to the director for signature and approval. Upon receipt of the director's signature, the Policy Unit will publish the policy on the Department Policies Index and may publish on the Policy News Pages on the Internet and Intranet.

Corresponding procedures should be drafted and prepared for a necessary reviews within thirty (30) days of publishing a revised Department policy.

### **3. Changes Elicited from a Work Group**

Significant policy-related issues sometimes arise outside of the annual review schedule. If the Leadership Team has not requested an immediate change, but a policy requires significant changes prior to the annual review date, a work group may be formed by the Policy Unit. The [Work Group Policy Revision Flowchart](#) illustrates the following process.

#### **a. Notice of formation**

Facilities and programs whose operations may be affected by the requested policy change will be contacted with an opportunity to join the work group.

#### **b. Work Group process**

The Work Group Process will allow for input from all work group members. Meetings in person or via video conferencing, online collaboration tools, or communication via email may be utilized in order to facilitate necessary discussions. Final revisions will be decided upon by a decision-making authority such as an administrator or member of the Management Team.

A General Review is not required for the Work Group Process but may be administered when deemed appropriate by the work group. The Policy Unit will submit the revised policy to Legal Review according to established criteria.

#### **c. Legal Review process**

In order to ensure that the Department's resources are used efficiently, the Policy Unit will use the [Policy/Procedure Legal Review Flowchart](#) to determine whether a policy requires a Legal Review before submission to the director for review and signature.

#### **d. Director Review and Signature**

The final draft, once a legal review has been completed, will be summarized in a Department [Policy Unit Memorandum](#) and submitted to the director for appraisal and signature.

New policy additions will be published upon receiving signature and approval by the director. Upon receipt of the director's signature, a policy will be published on the Department Policies Index and may be published on the Policy News Pages on the Internet and Intranet.

### **4. Clinical Review Process**

All policies and procedures related to clinical services will be reviewed by the clinical services policy team during development and prior to implementation. The clinical services policy team may consist of the Department Clinical Services Division administrator, medical director, dental director, managed care RN, facility or program designated health authority, mental health or psychiatric representative, and facility or program administrator.

In accordance with National Commission on Correctional Health Care (NCCHC) standards, Department clinical services policies will be signed by the Department director, Department medical director and Clinical Services Division administrator.

Procedures will include review and input from the clinical services policy team and will be signed by the administrator, facility or program responsible physician, and Clinical Services Division Administrator.

The members of the clinical services policy team will review each policy and procedure as part of the Department's annual policy and procedure review process to assure compliance with all local, state, and national requirements.

## **5. Union Review Process**

Department policies designated as Chapter 1, Section 3: Human Resources, upon significant revision, will be submitted via email or mail to union review.

## **V. REVISION AND RECISSION PROPOSALS**

### **A. Department Employees Requesting Revisions**

A Department employee may request a revision of any policy at any time throughout the year. The Policy Unit will consider each request and may take immediate action, begin a Work Group Review Process, or file and store the information until the policy is due for annual review.

Revision requests may be submitted by sending a message to the Policy Unit via email, phone, or mail.

Policy revision requests may receive a notice of receipt and a message from the Policy Unit explaining how the information will be used, i.e. immediate revision or pending revision. If the Policy Unit is unsure of the serious nature of the revision request, additional SMEs may be contacted for insight.

### **B. Recission Process**

Due to changes in legislation, ARM or other policy and/or legal requirements, existing policy may require rescission. Typically, policy rescission will be done at the request of the department director. When the suggestion for revision begins outside of the director's office the policy unit manager will create a work group if needed and will ultimately submit the rescission for leadership team discussion. If the Leadership Team agrees with the needed rescission they will work with the policy manager to submit the reason for rescission to the director for consideration.

The policy manager will send notice to the COR Policy Distribution email list with the justification and policy number being rescinded.

Procedure writers will have 30 days to effect required procedural rescission in accordance with the policy rescission.

The policy unit will retain a record of the rescission to include, date of rescission, justification for rescission, and the final copy of the rescinded policy.

## **VI. RECORD-KEEPING**

### **A. Physical Documentation**

The Policy Unit will carefully monitor, track, and record department policy changes with physical documentation.

#### **1. DOC Master Policy Manual**

Upon publication of a new policy on the Intranet and Internet, the Policy Unit will maintain the original version signed by the Department director in the DOC Master Policy Manual. The Policy Unit will add new policies to the annual review schedule for the upcoming year 12 months after implementation.

When a revised policy has been published on the Internet and Intranet, the Policy Unit will maintain the current revised version in the DOC Master Policy Manual. When unsubstantial changes have resulted due to a revision, the Policy Unit will place the policy copy with an electronic signature into the DOC Master Policy Manual. When substantial changes have resulted in a Department director signature, or the current director's signature is needed, the Policy Unit will place the original signed policy into the DOC Master Policy Manual.

#### **2. DOC Archived Policy Manual**

When the Policy Unit replaces outdated policies in the DOC Master Policy Manual, the outdated policies will be placed in the DOC Archived Policy Manual. Policies will be maintained in order of chapter and subsection, followed by newest to oldest version.

The Policy Unit will complete a [Notice of Rescission](#) for each rescinded policy including policy number, title, date of rescission, and reason for rescission. The Policy Unit will submit the [Notice of Rescission](#) to the Department director for approval and signature and store the notice in the DOC Archived Policy Manual.

## **VII. IMPLEMENTATION PROCESS**

### **A. Internet**

The Policy Unit will publish new policy additions and policy revisions immediately upon completion of a review cycle or receipt of the director's signature on the Department's Departmental Policies Internet page.

It is the responsibility of Department administrators and employees to ensure regular review of the Department Policy News page for information regarding policy changes. Division, facility, and program procedures must be updated promptly following the publishing date of a Department policy, when necessary, to comply with updated Department requirements.

## **VIII. STANDARD OPERATIONS PROCEDURES**

Standard operations procedures are written when all divisions, facilities and programs within the Department must follow the same guidelines regardless of offender population, location, etc. Standard operations procedures are developed, revised and published in accordance with this procedure and *DOC Policy 1.1.2 Policy Management System*.

## RIC agenda minutes August 2019

Attending: Terrie Stefalo, RAC Coordinator; Patrick Smith, Contract Beds; Wes Somogy, Legal; Quinten Johnson, CCC; Wendi Larson, Security; Amy Garland, LHU1 Unit Manager; Carla Strutzel, LHU2 Unit Manager; Harlan Trombley, Native American Liaison.

### Billy Henderson 3006151 MDIU – Hindu

- Hindu meditation mat or rug (Personal Property)
  - As a Hindu, he is to meditate 2-8 hours daily facing east.
  - He does not have the financial ability to purchase one.
    - *Hindu Prayer Mat on Amazon for 1.69*
    - *Alternative to prayer mat could be a towel*
  - *A Hindu prayer mat is approved weights on the corners of the mat will be taken out and stitched up by MCE. The price of the mat will include the alteration.*

### Steve Keefe 24842 C Unit – Buddhist

- Wood meditation benches – 2 (Communal Property)
  - Currently there are a number of cushions needing repair and take up a lot of space in the cabinet storing them.
  - The wood benches are durable, comfortable, and take up less space. The benches fold up.
  - A prototype of a bench was made at MCE.
    - *Bench would cost \$40 to \$50 each*
    - *Current cushion cost around \$30 to \$40 each*
  - *RIC approved one bench to be added to the communal property.*

### Robert Champagne 30939 – Riverside Unit – Native American Spirituality

- Establish a Pipe Ceremony at the Riverside Unit. (Communal Activity)
  - *Pipe Ceremony has been established at Riverside*

### Gabriel Little Dog 3023540 – LHU2 – Native American Spirituality

- To have access to and obtain religious items (Personal Property)
  - The religious justification is covered by statutes: Civil Rights of Institutionalize Persons Act (CRIPA), RLUIPA, The US constitution and federal and state laws protect the right to observe, practice, obtain and use sacred and sincerely held religious Native American items by law.
    - *What is allowed for personal religious property in Locked Housing?*
      - *Medicine bag*
  - *Denied. MSP has a compelling security interest in limiting religious property in Locked Housing Units.*
    - *Not enough staffing, air handling system can be compromised with Smudge smoke. Masks other odors.*

Gabriel Little Dog 3023540 – LHU2 – Native American Spirituality

- Smudge in Locked Housing (Personal and Communal)
  - Little Dog wants to smudge during outdoor recreation individually and communally with other Native Americans in Locked Housing.
  - First Amendment and RLUIPA Hyde v Fisher
  - *Denied. MSP has a compelling security interest in limiting religious property in Locked Housing Units.*
    - *Not enough staffing, air handling system can be compromised with Smudge smoke. Masks other odors.*

Joseph Smells 3011105 – A Unit – Native American Spirituality

- Peyote Drum (Communal Property)
  - To perform Native American Church Services to all who wish to attend.
  - *This item is used in Native American Church Services. There is no Native American Church Service. There is no facilitator for such an activity.*
  - *Denied. There is no facilitator to conduct a service. There is access to other drums for drumming in other Native American activities.*

Brandon Woodenlegs 2066488 B Unit – Native American Spirituality

- Authentic Eagle Bone Whistle (Communal Property)
  - Real Eagle bone whistles are akin to a Bible in Christianity. In native American culture, the real Eagle bone is used in reverence to the Creator (God) and carries our prayers up to Him.
  - *Only Native Americans can be in possession of any part of an Eagle.*
  - *Harlan Trombley explained that a person must earn the whistle. Only a Medicine man or Elder can give these to those who are worthy.*
  - *Harlan Trombley explained that offering a replica whistle bone is an act of disrespect.*
  - *Denied. Only Native Americans can be in possession of any part of an Eagle and denied for legitimate security reasons. This can be used as an alarm system, fashioned into a weapon, and hide contraband.*

Aaron Henderson 39925 LHUU2 – Native American

- Granted in part Locked Housing Native American programming
  - Henderson is asserting that he is granted smudge and pipe ceremony in locked housing.
- *Maybe escort Protected Custody Inmates in LHU2 to the RAC for a dedicated time and space to hold a pipe ceremony?*
  - *No. This would require total Institution lock down and inmates would have to be secured behind two gate system.*
- *Other States do not allow smoke or smudge in restricted housing areas and those that do provide for Locked Housing inmates, they escort them to the Sweat area grounds.*
- *Denied to a weekly Smudging & Pipe Ceremony due to compelling security interest.*
  - *Not enough staffing, air handling system can be compromised with Smudge smoke. Masks other odors.*
- *Approved for personal religious property that is approved for those practicing Native American Spirituality.*
  - *Inmates can practice their personal faith in-cell using the botanicals available off Canteen and dry smudge.*



#### Andrew Yellowbear 3021327 B Unit – Native American Spirituality

- Establishing Yearly Native American Religious Holy Days (Communal Activity)
  - Request that the Native America religious group be allowed two religious Holy Days a year during which we may pray, sing, and have a traditional feast for all that lives.
  - During these two separate holy days, we would pray, smoke the pipe, have a Sweat, sing traditional songs, and have a feast of traditional/familiar foods such as fry bread, soup, game meat (Deer, Elk, or Buffalo), or Indian tacos.
  - Because of the large variety of tribal beliefs represented in the inmate population, it is difficult to try and pick two separate days which would be respective of all. This because there are so many different tribes and each tribe observes holy days which have religious significance for its members. It is difficult to find common ground in establishing religious holy days.
  - Yellowbear proposes the first holy day take place during the first day of Spring, and the second holy day take place during the first day of Fall.
- *5.5.101 Special Activities could be utilized. This policy states that if there is an activity like this it is one for the Low Side and one for the High Side to be fair. 6 months clear conduct would be required. No special food other than what is served in Food Service for that day. Outside Volunteers would be included if they can but would not be required to do so in order to have this event. RAC staff would sponsor the event. Maximum (by policy) is 100 total for an event (this includes staff and volunteers)*
- *Approved for one Low Side Native American Holy Day. This event must fall under MSP 5.5.101. RAC will instruct Yellowbear of the process (MSP 5.5.101) and assist in developing the event.*

#### M Whitford 3015941 LHU1 – Native American

- Religious Programs in Locked Housing Units
  - Asked for religious materials but keep being bounced between RAC and Education
    - *(only detention inmates get loaner materials to read and he received all that we send to detention inmates that are Native American)*
    - *The RAC does not have a Library for general check out. All the books at the Library are for communal use in the RAC. Only detention inmates are allowed a "loaner"*
    - *Denied. There are other avenues in securing religious reading materials. The inmate may purchase a book, have a religious organization mail one in for him, or a family member off his visiting list can mail a book in for him.*
  - Requested Native American clergy visits with no success
    - *(the Native American clergy agreed to a phone visit, but Whitford went back to detention and was not allowed the call. Due to his behavioral issues, he would not be allowed to the office to receive the call and would have to make the call at cell side at his cost and not the volunteer's)*
    - *No change in procedure. The RAC will continue to reach out to the Native American volunteer to schedule a phone call at the inmate's expense cell-side.*
  - Policy is to provide reasonable and equitable opportunities to pursue religious activities
    - *Inmates in Locked Housing may pursue matters of faith in-cell and may request clergy visits. RAC staff will make every effort in scheduling clergy.*

- Policy states that the facility must provide to the extent practical, resources to support religious activities including adequate space and supervision.
  - Religious forums / Self-taught studies / contact with clergy of faith group
  - *Self-taught studies and clergy visits are allowed. Inmates in Locked Housing may pursue matters of faith in-cell and may request clergy visits. Inmates can purchase religious reading study materials, have a religious organization mail one in, or a family member off his visiting list can mail a study book. Inmates*
- Religious Property allowed for Locked Housing is inadequate
  - Materials (books)
    - *Denied, Inmate can purchase through approved vendors, have a religious group send books in, or have family members on visitor list mail in books.*
  - Medicine Bag from Canteen
    - *Denied. All approved religious items are purchased through the Canteen.*
  - Not allowed Eagle Feathers / prayer blanket / botanicals
    - *Looking into the Policy re-write and level system. Approved eagle feathers so long as they have the permit to do so. Denied prayer blanket and botanicals for safety and security reasons.*
- Religious property not allowed in LHU's must be destroyed or sent out.
  - Religious property should be treated like they treat electronics.
  - *Denied. No changes to procedure.*
- Religious Personnel should be required to do walk-throughs on a mandatory basis every week
  - *Denied. RAC staff are not clergy. RAC staff schedules visits for inmates in LHU's by request.*
- Programming should be developed in accordance with the new law (HB763) and the level system to better accommodate locked housing offenders religious exercise.
  - *No change in current procedure. RAC staff makes every effort to provide clergy visits for inmates in Locked Housing. Volunteers or outside guests are not always readily available. Inmates in Locked Housing can purchase reading materials and pursue matters of their own faith in-cell. Religious organizations and family members on the inmate's visiting list may also send in reading materials.*
- Modification of six-month clear conduct stipulation
  - Auxiliary groups (Drum Group) and Special Religious Activities such as Powwow/Spiritual Gathering requires 6-month clear conduct
    - 1<sup>st</sup> amendment right and this alone creates a substantive state-created liberty interest.
    - Any disciplinary infraction related to the 6-month clear conduct provisions can be challenged by state habeas corpus
      - What this means is that each individual denied holding the pipe, to participate in auxiliary services and to go to special religious activities can take their disciplinary decisions to state court.
        - *(Drumming is available to drum during Sweat ceremony, Pipe ceremony, sweat ceremony, Talking Circle do not require 6-month clear conduct, Special activities require 6-month clear conduct for security reasons for safety of the public attending.)*
    - 6-month clear conduct stipulation found in the RAC rules, the Native American Religious Programming Guidelines, and the DOC/MSP 5.6.1 MSP 5.5.101 created an avenue

whereby staff and correction authorities may utilize disciplinary measures to discriminate and disrupt offenders' religious activities and 1<sup>st</sup> amendment rights.

- *Denied. Regardless of the 6- month clear conduct rule for Drum Group, the Inmates do not require 6 months clear conduct to drum during Sweat, or Pipe ceremonies. Auxiliary groups and Special Activities remain the same. Special Activities involves the Public. For safety reasons the 6-month clear conduct rule remains.*
- Provisions for fasting (both personal and communal)
  - In Tribal traditions seasonal equinoxes and solstices are observed.
    - Observance occurs at the next scheduled Sweat
    - While in Washington DOC he fasted during the change of seasons
      - Change of seasons allows us to recognize and be involved in a communal activity that everyone can share no matter their location.
    - A healthy fast consist of healthy liquids. In some ways this is a religious diet.
      - The fast would consist of fluids available for 7 days during the equinox or solstice. In Washington we were given a choice of taking a regular meal or fast and receive liquids only (milk, juice, etc.).
      - Anyone can break-fast at anytime they want and nobody has to participate.
      - Anyone who participates receives a sack lunch at the end of the week and some frybread that is made by the "brothers" on the mainline. (2 Pieces)
        - The tradition behind the frybread is its significance to the Reservation Days when American Indians were first put on Reservations. Many people starved to death. Today, Frybread is a staple of American Indian cuisine.
        - When given frybread we are to offer some of it to the spirits in a communal prayer.
        - So when we fast, we feel the hunger that our ancestors felt and we are able to remember how they got through these times.
      - Anyone who did not participate and is Native American still gets frybread too.
      - For those in main population where ceremonies are held, there is seven days of week of ceremonies, four times a year.
        - Sweat for the last four days (one for each direction). The other days there is a pipe ceremony.
    - The length of fast can range from hours, a day...up to two weeks or more. It depends on what an individual is praying about.
    - *Fasting is allowed and Food Service can provide a Sack Lunch at completion. No Frybread.*
    - *Approved to fast. Inmate must be specific in the dates he is fasting. Upon completion of the fast Food Service will provide a Sack Lunch. There will be no frybread.*

Daniel Cagey 2129382 A Unit -- Wicca

- Herbs and crystals (Personal Property)
  - Juniper; Sweet Grass
  - Crystals
  - This upholds the wicca group purpose. It's part of the group purpose just as it is for the Native American group purpose. It is part of our religious ceremony for the wicca purpose.
  - *Gives no religious justification for any of the items requested.*
  - *Denied. Not enough information for the RIC to base a decision on.*

Mike Anderson 3000199 HSU2 – Wicca

- Herbs (Communal Property)
  - Clover – This herb is for money, love, protection, repel negativity and stop gossip. This herb will be mostly used for repelling negativity within the circle during rituals.
  - Orris Root – This would be used for divination rituals such as the crystal ball and tarot readings, this herb is to purify the room/circle for stronger divination readings.
  - *Denied. The current herbs already offered provide the same as clover and orris root.*

Jacob Wing 3010903 D Unit – Wicca

- Personal Tarot Deck (Personal Property)
  - The Greenwitch tarot deck is a divinatory dead zone for him.
  - The deck that he can properly works best for him is the Thoth Tarot deck.
  - *Denied. Approved religious personal property is purchased through the Canteen.*

Benjamin Llewellyn 3019370 – Wicca

- Approval to wear gym shorts during service time. (Communal Property)
  - A lot of spells and rituals are supposed to be done while sky clad (naked). Knowing this is not appropriate, they ask to wear gym shorts like the Native Americans do during Sweat.
  - *Does not list what kind of rituals and spells and when they are done.*
  - *Denied. There is no legitimate justification as to why this is necessary.*

Colton Sheppard 3023110 B Unit – Odinist

- Dark God Parchment Poster (Personal Property)
  - The Wiccans has available to them a parchment prayer that gives prayer to Hodur who is Balder's brother, son of Odin. I request the Odinists to be able to purchase this item.
- Nine Noble Virtues Poster (Personal Property)
  - The Wiccans have the 9 virtues poster and want this poster made available for the Odinists.
- *Both items would be appropriate to offer for the Odinists.*
- *Approved.*

Levi Stark 3014147 HSU1 – Odinist

- Shirtless outdoor ceremonies (Communal)
  - Odinism is a very nature-based religion having a lot to do with the Sun and other elements of the natural world. During outdoor ceremonies, Odinists invite the Gods to be with them and feel their power and presence.
  - During such ceremonies it is best to be in ones' most natural state to present ones' self to the Gods and the nature.
  - This is standard practice in other prisons and is allowed at outdoor Native American ceremonies at MSP.
  - *This is not a requirement and does not hinder their ability to practice Odinism.*
  - *Denied for Security and Safety reasons.*

Steven Johnson 2018526 HSU1 – Odinist

- Sweat Lodge for Odinist Group (Communal Property)
  - You should be in a sauna as in a church. Fins and Northern European tribes used them- stone buildings.
  - This is close to the same as Native American Sweat Lodges.
  - Norse bath houses were normally dug into the side of a hill with what would resemble an oven inside.
    - Asking for a removable hut or something close to the set up for the Native American Sweat Lodge but smaller
  - Sacred steam is also the breath of our ancestors and because a lot of our ancestors moved onto God-head our sweats would be our communication with our ancestors as well as our gods.
  - References can be found in the book Wight Ridden under the chapter: Fire and water sauna purification.
  - *Denied. This is not essential to the practice of Odinism. Honoring and communicating with the Gods are also done at an altar which this is already accommodated for during their ceremonies.*

Marcus Light 3010624 HSU1 – Odinist

- Exclusive Odinist Outdoor Worship Area (Communal)
  - Odinists require a “sacred land” area for worship that is secure from trespassers.
  - Odinist, Wiccans, and Native Americans require separate spiritual areas.
  - Not having a separate spiritual area prevents Odinists from practicing their faiths according to their sincerely held beliefs.
  - Sharing spiritual land creates an environment of confusion and loss of focus for Odinists and spirits Odinists are calling upon to partake in the rituals with them.
  - Sharing sacred worship areas transgresses against the deities and practitioners of each faith.
  - Sharing the land with Wiccans and Native Americans coerces them to abandon their sincerely held religious practice.
  - By forcing the Wiccans and Odinists to use different facilities including but not limited to the fire pit and sweat lodge transgresses on their “sacred land” whether owned or not is a violation of the 14<sup>th</sup> amendment by treating Odinists and Wiccans differently than the Native Americans.
  - *Denied. The fire pit area is large and provides ample space for all faith groups to use. Just as the inside of the Religious Activities Center is used for multiple faith groups, so is the outside common area.*

Danny Warner 3022806 LHU2 – Odinist

- Winter Nights Fast & Feast (September 23- October 17) (Personal)
  - The winter nights fast and feast is an essential religious observance for fundamental Odinists where we stand in solidarity with the (??) in preparation for the Ragnarok by fasting throughout the day and feasting after the sun sets.
  - Accommodation of winter nights take the form of providing adherents with natural fruits, vegetables, meats, etc. each night of the fast and feast in the amounts equal to the days’ caloric intake so that they ma feast with the Gods and (??).
  - Warner v Patterson, 2012 US Dist Lexis 131559\*9
  - *Granted. Food Service is already aware of this approval. What is already approved food items for Locked Housing will be served.*

Aaron Ludwig 3013604 CCC – Rastafarian Bobo Ashanti Rasta

- Ludwig states he is Bobo Ashanti Rasta
- He would like to purchase the following items (Personal property):
  - Turban
    - It is his religion to have his hair covered and his 1<sup>st</sup> amendment right.
    - *Turban/Tam are used to secure dreadlocks*
    - *Denied for personal property.*
    - *Approved for communal property to be worn during service time only.*
  - Tam Headdress
    - It is his religion to have one.
  - African Robe
    - *This is worn to distinguish them from others. This is not religious in nature.*
    - *Denied. Security Reasons.*
  - Hebrew Calendar
    - *Approved. Chbad has Hebrew calendars to print off of their website.*
  - Religious medallions of the Star of David, the Lion of Judah, and ankh cross (all made of natural materials)
    - *All these are used in the Rastafari faith.*
    - *Approved to purchase through the Canteen one medallion from a choice of three styles.*
  - Ital diet (I forwarded this request back to CCC to determine)
    - *CCC approved a kosher diet*
  - Wants a separate canteen list with only Ital or Kosher items to purchase from.
    - *Canteen provides this upon request.*
  - Religious reading materials printed out of Rastafarian language and symbols, prayers, information on Bobo Ashanti Rasta and lyrics to songs (lists in request)
    - *Denied. Inmates may purchase reading materials, have family members purchase books, or religious organizations.*

Christopher Bryant 3024018 CCC – Rastafarian

- Have hair and head covered and or wrapped up (Personal property)
  - *See Ludwig decision.*
- Crystals (Personal and Communal Property)
  - Crystals hold energy in them. The way crystals hold or absorb energy is through the sun, by being placed outside in the sun. The crystals are being “recharged”. Through the crystal’s energy, it in turns gives us the individual positive energy. The body holds natural energy called Amber.
    - *Cannot find any religious requirement for crystals.*
    - *Denied crystal for personal property. Approved alternative of quartz crystal pendulum on chain for personal property.*
    - *Approved a 1”x1” crystal pyramid for communal property.*
- Requests for he and three others, drums for their prayers and music which are called foundations. (Communal)
  - *Communal group numbers are reviewed annually by the RIC. The RIC determined 5 adherents before considering adding a communal activity.*
  - *CCC will review and determine a communal activity based of the above criteria of 5 adherents, space, time and availability of staff.*

Jeromey Jones 3022102 CCC – Rastafarian Christian

- Turban or Tam - Requesting to cover his hair. (Personal and Communal accommodation)
  - The Free exercise clause of the 1<sup>st</sup> Amendment protects the right to follow the practices of your religion.
  - Covering your hair is a practice of Rastafarian.
  - *SEE LUDWIG*
- Star of David medallion (Personal and Communal Property)
  - Want the Rastas to be able to purchase this.
  - *See Ludwig*
- The Lion of Judah medallion (Personal and Communal Property)
  - The Lion of Judah is a piece of our religion as well as a Bible reference.
  - *See Ludwig*
- Ankh Medallion (Personal and Communal Property)
  - This is a cross that is used in the Rastafarian religion.
  - One large Ankh cross preferably wood for Communal Property
  - *See Ludwig*
- Crosses – All Natural (Personal and Communal Property)
  - Rastafarians choose more of an all-natural lifestyle.
  - Want approval to make their own crosses from string hemp, horsehair, or leather.
  - *Denied. This would be considered finished hobby and all finished hobby is either sold at the Hobby Shop or mailed out to family.*

Michael Vance 3023268 CCC – Rastafarian

- Tam Headdress (Personal Property)
  - To conceal his hair. It's part of his religion and 1<sup>st</sup> Amendment right.
  - *See Ludwig*
- Turban (Personal Property)
  - To conceal his hair. It's part of his religion and 1<sup>st</sup> Amendment right.

Walter Hill 2106783 CCC – Islamic

- Al-Fitr (Communal)
  - Al-Fitr is the end of Ramadan celebration (Feast).
  - Requesting a gathering of Muslim body (for MSP inmates) be provided with a menu in which they cook and break fast with a meal shared together by themselves in the kitchen dining room.
  - He states that this is something the Muslims organized with staff in Shelby when he was last there.
  - *Eid-UI-Fitr is the "Breaking of the Fast" feast and is the ceremonial holy day after the end of Ramadan when it is obligatory to end the fast. This is a day free from work for Muslim inmates who request the accommodation. Religious rites include a special prayer which is performed well after the sun is above the horizon, followed by a Khutbah. It is customary to eat before the prayer to ritually end the Ramadan fast.*
  - *Denied, no special meal or communal time is required to feast. Breaking the Fast can be accomplished by receiving their regular meal in the Dining Hall.*

Joshua Prink 3026326 GFRP – Odinist

- Ability to have hooked crosses (swastikas) drawn with other religious symbols. (Personal Property)
  - Drawing hooked crosses is part of his Asatru/Odinist faith.
  - He draws it with ancient (??) and other symbols such as Thors Hammer...
  - He is not part of any STG – just a pagan who practices Asatru mixed with celtic paganism.
  - They are symbols of inspiration that predate all negativity and even most religions that altered their use by over a thousand years.
  - *Denied. This would require an art permit.*

Nathanial Kibby 3019567 LHU2 – Christian

- Approval to draw Christian drawings using plain paper and pen or pencil sold on canteen.
- Though the grievance process he was told “simple drawings using only paper and pencil or pen sold on the canteen require an art permit.
- *Approved to draw religious drawings using plain paper, pen or pencil sold on canteen. Once finished, you may keep it or throw it away.*

Religious Dietary Sanctions

- Revise First Offense to add: When a preference-based vegetarian loses his vegetarian privilege and then (within 1 year) obtains a religious authorization for the same diet, he starts his religious-based vegetarianism with a first offense warning letter.
  - *Denied revision. Secular diets are different than religious diets and are treated individually.*

Diet approvals / denials:

- Perry Burnett 3016049 Messianic Judaism
  - Kosher diet
  - Deceptive interview
    - Denied
- Robert Andrews 2137359 Christian
  - Vegetarian
    - Approved
- Derek Coody 3012602 Christian
  - Vegetarian
    - Approved
- Dante Kier 3011746 Satanist
  - Vegan Diet
    - Approved
- Aaron Rose 3012599 Wicca
  - Vegetarian
    - Approved
- Malik Abdul Aziz 3010545 Muslim
  - Kosher
    - Approved
- Kaylob Trowbridge 3015330
  - No Pork diet
    - For educational quest not spiritual
    - Denied
- Aaron Ludwig
  - Kosher



- Approved
- Jeromey Jones
  - Kosher
    - Approved
- *All diets were affirmed by the RIC*

## **Statement of the Department of Justice on the Institutionalized Persons Provisions of the Religious Land Use and Institutionalized Persons Act (RLUIPA)**

The Religious Land Use and Institutionalized Persons Act (RLUIPA), 42 U.S.C. § 2000cc, is a civil rights law that protects the religious freedom of persons confined to prisons, jails, and certain other institutions in which the government exerts a degree of control far greater than that which is found in civilian society. After hearings in which Congress found that persons residing in institutions are sometimes subject to discriminatory or arbitrary denial of the ability to practice their faiths beyond what is needed for the security and proper functioning of the institution, Congress passed RLUIPA unanimously in 2000. President Clinton signed RLUIPA into law on September 22, 2000.

Congress found that individuals confined to institutions are often subject to the authority of a small number of local officials, and that the religious exercise of individuals in those institutions is often limited, sometimes in egregious and unnecessary ways. Congress also found that officials in these institutions occasionally imposed frivolous and arbitrary restrictions on the religious liberty of individuals confined to those institutions. In introducing the bill that would become RLUIPA, Senator Kennedy noted that institutionalized persons were often denied opportunities to practice their religions even when such practice would not have harmed the discipline, order, or safety of the institutions in which they were located. He also noted that restrictions on the practice of religion in the prison context could even be counter-productive because “[s]incere faith and worship can be an indispensable part of rehabilitation.”

Section 3(a) of RLUIPA prohibits regulations that impose a “substantial burden” on the religious exercise of persons residing or confined in an institution. This provision also makes clear that its prohibition applies even if the regulation imposing the burden is a rule of general applicability. Regulations amounting to a substantial burden will only be permitted if the government can show that the regulation serves a “compelling government interest” and is the least restrictive way for the government to further the identified compelling interest. And Congress stated that RLUIPA “may require a government to incur expenses in its own operations to avoid imposing a substantial burden on religious exercise.” § 2000cc–3(c).

In *Holt v. Hobbs*, the first Supreme Court case directly interpreting RLUIPA’s substantive provisions, the Court affirmed that the strict scrutiny analysis required by the statute is “exceptionally demanding” and that the protection it affords is “expansive.” 135 S. Ct. 853, 860, 864 (2015) The petitioner in *Holt* was a Muslim prisoner who challenged the Arkansas Department of Corrections’ (ADOC) grooming policy, which prohibited beards and provided no exceptions for requests based on religion. *Id.* at 860–61. The Supreme Court found that the grooming policy violated RLUIPA because the ADOC failed to prove that prohibiting beards was the least restrictive means to further its interests in (1) preventing prisoners from hiding contraband and (2) quickly and reliably identifying prisoners. *Id.* at 863–65. The Court found that there were less restrictive means to further these interests. For example, the ADOC could search beards to limit

contraband and take pictures of prisoners with and without beards to enable speedy identification. *Id.* Furthermore, the ADOC did not show why it must take a different course from the many other correctional facilities around the country that permit the plaintiff's requested beard exception. *Id.* at 865-67. *Holt* makes clear that courts should not accept prison administrators' broad statements about governmental interests as a basis for denying religious accommodations. *Id.* at 863-64.

RLUIPA's protections can be enforced by the Department of Justice or by private lawsuits. In the fifteen years since its passage, RLUIPA has been applied in a wide variety of contexts and has been the subject of substantial litigation in the courts. The Department of Justice has enforced RLUIPA in a variety of ways, including conducting investigations, making findings, entering into voluntary agreements and consent decrees, intervening in existing lawsuits, filing statements of interest in existing cases, and filing litigation on behalf of the United States. For example, the Department has filed statements of interest in cases related to restrictions on beards and hair length, Ramadan accommodations, religious diets, and access to tobacco for religious use. The Department has also intervened in litigation to protect prisoners' rights to access religious texts and to protect Sikh prisoners' right to keep hair unshorn. Recently, the Department obtained an injunction requiring the Florida Department of Corrections to provide kosher food to prisoners whose sincere beliefs require that diet.

To assist institutionalized persons in understanding their rights under RLUIPA, and to assist state and local governments in meeting the requirements of RLUIPA, the Department of Justice has created this summary and accompanying answers to frequently asked questions.

## **Questions and Answers on the Institutionalized Persons Provisions of RLUIPA**

### **1. Who is protected by RLUIPA?**

RLUIPA protects all persons "residing in or confined to an institution" as defined by the Civil Rights of Institutionalized Persons Act (CRIPA), 42 U.S.C. § 1997. While most claims address prisons and jails, the definition of "institution" in CRIPA includes state or local government-operated intermediate and long-term care facilities, mental health facilities, correctional facilities, pretrial detention facilities, and juvenile detention facilities, so these facilities are also covered by RLUIPA. Private prisons and jails are generally covered by RLUIPA, because they are operated on behalf of states or municipalities. Other private facilities may be covered by RLUIPA if they are acting on behalf of a state or local government agency. RLUIPA does not apply to institutions owned or operated by the federal government, though another, similar law, the Religious Freedom Restoration Act (RFRA), 42 U.S.C. § 2000bb, does apply to those institutions.

### **2. What does "religious exercise" include?**

RLUIPA defines religious exercise to include "any exercise of religion, whether or not compelled by, or central to, a system of religious belief." As with all provisions of RLUIPA, according to Section 5(g) "religious exercise" must be "construed in favor of a

broad protection of religious exercise, to the maximum extent permitted by the terms of this chapter and the Constitution.” Although the definition of “religious exercise” in RLUIPA is broad, an individual must nevertheless show that the exercise burdened is a part of the individual’s religious beliefs, and not merely a secular or philosophical position.

Additionally, the religious belief must be sincerely held, and institutions are permitted to inquire into the sincerity of the person’s belief before accommodating the person’s religious exercise. However, such an inquiry must be handled with a “light touch” and limited largely to assessing the prisoner’s credibility. Prison officials may not base their determinations on whether or not a particular observance is orthodox.

Accordingly, courts have found that a variety of practices constitute religious exercise under RLUIPA, including: attending religious services, joining prayer groups, leaving hair uncut, wearing head coverings, adhering to certain dietary restrictions, participating in religious fasts and thus receiving meals at irregular times, and receiving certain religious reading materials.

### **3. What kinds of burdens on religious exercise are “substantial burdens” under RLUIPA?**

The Supreme Court has had occasion to consider how to determine whether a particular departmental policy imposed a substantial burden under RLUIPA. In *Holt v. Hobbs*, a policy of the Arkansas Department of Corrections prohibited the keeping of facial hair and required all inmates, including petitioner, to shave his beard. For petitioner, this would have been a serious violation of his religious beliefs. However, if petitioner refused to comply with the policy and chose to grow his beard, he would face disciplinary action. “Because the grooming policy puts petitioner to this choice” between violating his religious beliefs and risking serious discipline, the Court found the policy “substantially burden[ed] his religious exercise.” The Court’s analysis in determining whether there was a substantial burden adopted a framework that lower courts had developed in adjudicating RLUIPA cases prior to the Court’s *Holt* decision.

To determine whether the burden imposed is “substantial,” courts have focused on the degree to which a given regulation would require an adherent to alter or abandon the adherent’s religious practice. The interference with one’s religious practice must be significant; a marginal interference will not suffice. The substantial burden inquiry is fact-intensive, and the burden is on the person asserting a substantial burden to prove that the institution’s policy or practice constitutes a substantial burden. Courts will also consider whether accommodations for religious practice burden the rest of the institutionalized population and whether they are administered neutrally among various faiths.

Applying these standards, courts have found that a substantial burden exists where institutional rules limit access to religious books, use coercion to require shearing of hair, or fail to provide necessary dietary accommodations. Conversely, courts have been reluctant to find a substantial burden where a religious practice was made merely

inconvenient or more difficult. For example, courts have round the use of a soft-cover instead of a hard-cover Bible and the use of prison-distributed prayer towels instead of traditional prayer rugs to not constitute a substantial burden. Similarly, where inmates were offered alternative diets which would comply with their religious requirements, but not the specific diet requested, no substantial burden was found.

#### **4. What if the substantial burden is the result of a rule of general applicability?**

RLUIPA makes clear that, even if the substantial burden on an institutionalized person's religious exercise is the result of a rule that applies to everyone in the institution, the institution will still be in violation of RLUIPA unless it can demonstrate that application of the rule is in furtherance of a compelling government interest and is the least restrictive means of furthering that compelling government interest. For example, an institution may have a rule prohibiting headwear of any kind, but RLUIPA may require that a Jewish individual be permitted to wear a yarmulke in observance of his religious practices, or may require that a Muslim individual be permitted to wear her hijab.

#### **5. What are examples of a compelling interest that would permit an institution to impose a substantial burden on religious exercise?**

A “compelling governmental interest” is an interest “of the highest order.” In the context of RLUIPA's institutionalized persons provisions, a compelling governmental interest is one that furthers “good order, security and discipline, consistent with consideration of costs and limited resources.” When officials assert that such concerns are compelling, the courts should be respectful of their expertise. However, such respect does not mean “unquestioning deference,” and courts must still apply “RLUIPA's rigorous standard” when independently assessing whether an asserted interest is truly compelling.

RLUIPA, like RFRA, contemplates a ““more focused”” inquiry and ““requires the Government to demonstrate that the compelling interest test is satisfied through application of the challenged law “to the person”—the particular claimant whose sincere exercise of religion is being substantially burdened.”” *Hobby Lobby*, 573 U.S., at —, 134 S. Ct., at 2779 (quoting *O Centro*, supra, at 430–431, 126 S. Ct. 1211 (quoting § 2000bb–1(b))).

When determining whether a compelling governmental interest exists, courts will give some deference to the administrators of institutions in determining appropriate regulations for those institutions, but will nevertheless require that administrators support their assertions of appropriateness with specific evidence. “[M]ere speculation, exaggerated fears, or post-hoc rationalizations will not suffice....” Thus, bare assertions that a religious accommodation will compromise the security or integrity of an institution will not suffice. Similarly, inconsistent or arbitrary regulations will not qualify as serving compelling interests.

When institutions have provided concrete evidence, courts have recognized that a variety of regulations that substantially burden religious exercise also serve a compelling interest. For example, requiring grooming in segregated holding has been found to further the compelling interest of health and security, and placing certain restrictions on the formation of organized groups has been found to serve the limited interest of preventing the growth of gangs. On the other hand, courts have rejected assertions of compelling governmental interest in the orderly administration of a prison's dietary system when the prison already serves meals that would satisfy the prisoner's dietary needs, and have found that an arbitrary limit on the number of books an inmate could keep in his cell did not further any compelling interest.

**6. What actions must an institution take to demonstrate that imposition of the substantial burden is the least restrictive means to achieve the compelling governmental interest?**

Where a correctional institution's regulation imposes a substantial burden on a prisoner's religious exercise, the regulation violates RLUIPA unless the institution demonstrates both: (1) that a compelling governmental interest necessitates the imposition of the burden; and (2) that the regulation is the least restrictive means to further that interest. Thus, even regulations that serve a compelling interest violate RLUIPA if they are not the least restrictive means to further a compelling interest.

To satisfy the "least restrictive means" requirement of RLUIPA, courts have required institutions to show that alternative means of satisfying the compelling government interest were considered and found insufficient. The ability of other correctional institutions to further comparable interests without using the challenged regulations is evidence that a less restrictive alternative is available. Indeed, where a significant number of other institutions allow an accommodation, an institution cannot deny that accommodation consistent with RLUIPA's strict scrutiny requirement unless the institution offers persuasive reasons why it cannot adopt the less restrictive methods used elsewhere. Less restrictive alternatives used by the Federal Bureau of Prisons (BOP) are particularly relevant to the least restrictive means analysis because BOP manages the country's largest correctional system while adhering to the comparably strict protections for religious exercise that are guaranteed by RFRA. Consequently, where BOP accommodates a particular religious exercise, an institution that forbids that exercise is unlikely to satisfy RLUIPA's strict scrutiny inquiry unless it can demonstrate that the BOP approach is unworkable.

Regulations burdening religious exercise likewise may fail strict scrutiny if they are under-inclusive. That is, a restriction on a prisoner's religious exercise is unlikely to satisfy strict scrutiny where the correctional institution permits similar accommodations for other prisoners.

## **7. Must a religion be “recognized” in order to be protected by RLUIPA?**

RLUIPA’s protections extend to restrictions that burden the exercise of a prisoner’s sincerely-held religious beliefs. This analysis centers on the religious beliefs of an individual prisoner, not their interpretation by prison officials or religious authorities. Guided by this principle, Courts have applied RLUIPA to protect the religious practices of a wide variety of religious traditions, including Buddhism, Christianity, Hinduism, Islam, Judaism, Native American religions, and Sikhism. RLUIPA’s protections also extend to subgroups within more widely-known religious traditions.

Some institutions, however, provide accommodations only for certain “recognized” religious traditions. If a policy of this type causes a substantial burden on a prisoner’s religious exercise, it would violate RLUIPA unless the institution can establish that the policy is in furtherance of a compelling government interest and is the least restrictive means of furthering that interest.

## **8. When must someone file suit under RLUIPA?**

RLUIPA lawsuits brought by private plaintiffs must be filed in state or federal court within four years of the alleged RLUIPA violation. Before they may file suit under RLUIPA, prisoners are required to exhaust available administrative remedies. The United States, however, is not required to show that prisoners have exhausted administrative remedies in order to bring suit under RLUIPA.

## **9. What can a government do to comply with RLUIPA?**

When a prisoner seeks a religious accommodation, jurisdictions should assess whether their existing policies are the least restrictive means of furthering a compelling governmental interest. Where existing policy is not the least restrictive means to further the governmental interest, the jurisdiction should consider: (1) changing the policy or practice that results in a substantial burden on religious exercise; (2) retaining the policy or practice and exempting the substantially burdened religious exercise; (3) providing exemptions from the policy or practice for applications that substantially burden religious exercise; or (4) any other means that eliminates the substantial burden. For example, if a Muslim prisoner seeks to wear a kufi, the jurisdiction could accommodate that request by changing the policy to permit all prisoners to wear headgear, changing the policy to allow prisoners to wear any religious headgear, or permitting exemptions to individuals whose religious practice is substantially burdened by the policy.

## **10. What is the Department of Justice’s role in enforcing RLUIPA?**

The Department of Justice is authorized to file a lawsuit under RLUIPA for declaratory or injunctive relief, but not for damages. In other words, the Department may bring suit seeking an order from a court requiring an institution that has violated RLUIPA, for example, to amend the policy or practice that results in a substantial burden on the religious exercise of an individual confined to that institution. The Department also files

Statements of Interest in cases that raise important issues connected to RLUIPA's application.

Responsibility for coordinating enforcement of RLUIPA's institutionalized persons provisions has been delegated to the Special Litigation Section of the Civil Rights Division. The Section investigates and brings RLUIPA lawsuits, both on its own and in conjunction with United States Attorney's offices around the country. If you wish to bring a potential case to the attention of the Department of Justice, you should do so as soon as possible to allow adequate time for review.

The Department's RLUIPA enforcement efforts cover protection for a broad range of religious exercise, including prisoners seeking: religious diets; access to religious texts, other religious literature, and items used in worship; the ability to grow and maintain beards or long hair; and access to religious services and ceremonies.

The Department exercises its prosecutorial discretion in deciding whether to bring a RLUIPA suit on behalf of the United States or file a Statement of Interest in litigation brought by private parties. The Department receives many complaints from individuals and groups whose rights under RLUIPA may have been violated, and cannot address all cases that may involve valid claims. Rather, the Department endeavors to select cases for prosecution that involve important or recurring issues, that will set precedents for future cases, that involve particularly serious violations, or that will otherwise advance the Department of Justice's goals of advancing civil rights for all. Aggrieved individuals and institutions are encouraged to seek private counsel to protect their rights, in addition to contacting the Department of Justice.

#### **11. How can someone contact the Department of Justice about a RLUIPA matter?**

The Civil Rights Division's Special Litigation Section may be reached at:

U.S. Department of Justice  
Civil Rights Division  
950 Pennsylvania Avenue, N.W.  
Special Litigation Section, PHB  
Washington, D.C. 20530  
[Special.Litigation@usdoj.gov](mailto:Special.Litigation@usdoj.gov)



Bill: HB-2: General Appropriations Act 2021-02-02 08:00 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](mailto:Letthemcomehome@gmail.com)

Phone: (406) 404-1742

City, State: Helena, MT

Written Statement: We who advocate for the lives of people in prison have been watching the hearings.

Additional information and concerns that have been raised over the past few years have been presented at Prison Issues Board meetings. Some of it directly pertains to budgets. There are a lot of expenses that are coming out of the Inmate Welfare Fund without inmate knowledge or approval. The Inmate Welfare Fund exists for specific purposes. We have received a lot of feedback that a lot of money is being extracted from the Inmate Welfare Fund that is not authorized. These expenses should be coming out of other accounts designated for operations, RAC etc. So the question of what MT State Prison is doing with the money allocated to them, if they are also taking it from the IWF remains.

Here is the link to the Prison Issues Board website.

<https://cor.mt.gov/Adult/PrisonIssuesBoard#:~:text=The%20Prison%20Issues%20Board%20was,prison%20system%20was%20expanding%20significantly.&text=The%20state%20was%20in%20the,when%20the%20task%20force%20be gan.>

The Prison Issues Board minutes from the past 2 years are attached. Written statements of the public telling their concerns are available on the left hand side of the website. The minutes also contain any public comment that was presented by the concerned person that physically traveled to the meeting. \*The September 2020 meeting was very important. The Prison Issues Board was recorded by the DOC on Zoom. The DOC has the recording of this meeting on archive somewhere.

ATTENTION: In an effort to hide public concerns and not be transparent, the DOC is now making it known that the the Prison Issues Board is not required by statute. The DOC has refused to interface with the public in a meaningful way or at all. DOC's practice is not to return phone calls and emails. DOC in Helena won't allow people in the public to make an appointment to discuss concerns. If the public shows up at the DOC's brick building on Last Chance Gulch, they will NEVER let you in. The public is left standing in the foyer talking on a phone to a receptionist who says to make an appointment, but the public cannot ever secure an appointment. The receptionist ALWAYS pretends that the person is out of the office, out of town or in a meeting. This goes for Reg Michael, Cynthia Wolken, Harlan Trombley, Coleen Ambrose, Carolyn Bright etc. This was happening years before Covid started, and continues to this day. The Department of Corrections refuses oversight. They try and discredit audits and won't let the media, humanitarian groups (or legislators) do a spot-check to observe what is happening in the facility without a far-advance appointment. When they do permit a rare tour is it only of what the brass wants them to see.... a spit-shined version that doesn't show them the truth of what is really happening. We hope the new governor will be alerted and will continuously send in people to spot-check what is happening within prison walls, without prior notice. It is BAD.

The Department of Corrections is making it known that they have the power to take away the public's only means of coming forward with complaints. DOC's head attorney actually hangs up on people who call to make a complaint. Ambrose laughs and says, "So sue us! Bring a legal complaint and sue us. Otherwise, I am done talking to you [hangs up]". Reg Michael stated in a Prison Issues Board meeting that what is happening at MSP is not okay. That [DOC] WILL be sued and they'll loose millions of dollars". In the same statement Reginald Michael said that complaints are just going to have to go up the legal ladder and that this is the only way things will change. Reginald Michael talked

about the "culture" of guards and management at the prisons being a huge problem that needed to change. Reginald Michael recognized that the problem is not with the inmates or the public, but is with the culture of the facility.

The problems are from top management on down. The problems are from (some) Correction Officers on up. There are problems with Command Post and with IPS- Internal Prison Security especially. Look at the senior staff. Look at those who have been working there for 17 years and up. Look at who the Union continuously protects because of seniority. These are the bad WOMEN & men who are bringing down the department and stealing money, bringing in drugs into the facility, who are abusing their authority in accounting and on the pods, who look the other way on violations of the Prison Rape Elimination Act (PREA). It is the senior management who keeps the circle small and always claims that no one wants to work there.

How about we make the DOC do the right thing and act fiscally responsible? How about we give them surveillance and TRUE oversight? How about we stop wasting money on funding DOC Legal and Quality Assurance departments when they are betting on the incredibly slim chance that the inmates and public will have the stamina to succeed pro se or find a lawyer willing to go up against the State Corrections Dept?

How about we STOP FUNDING CORRUPTION?

The DOC cites MCA 53-1-109 for the Inmate Welfare Fund:

Montana Code Annotated 2019

TITLE 53. SOCIAL SERVICES AND INSTITUTIONS CHAPTER 1. GENERAL ADMINISTRATION OF INSTITUTIONS Part 1.

General Provisions Facility Resident And Prison Inmate Welfare Account 53-1-109. Facility resident and prison inmate welfare account. (1) There is an account in the state special revenue fund. The net proceeds from Pine Hills youth correctional facility resident and state prison inmate canteen purchases and resident or inmate telephone use, cash proceeds from the disposition of confiscated contraband, and any public money held for the needs of residents or inmates and their families and not otherwise allocated must be deposited in the account. Money in an account established under 53-1-107 may not be deposited in the account established in this subsection.

(2) The money in the account is statutorily appropriated, as provided in 17-7-502, to the department of corrections, which may allocate the money referred to in subsection (1) to the Pine Hills youth correctional facility and state prisons in proportion to the amount that each facility contributed to the fund. The superintendent of the Pine Hills youth correctional facility and the administrator of each state prison shall consult with the residents and inmates in the superintendent's or administrator's respective facility about the use of the money allocated to the Pine Hills youth correctional facility or the state prison and may use the money for the needs of that facility's residents or inmates and their families.

(3) For purposes of this section, "state prison" has the meaning provided in 53-30-101(3)(c)(i) through (3)(c)(iii) and (3)(c)(v).

History: En. Sec. 3, Ch. 353, L. 2003; amd. Sec. 1, Ch. 2, L. 2019.

**DEPARTMENT OF CORRECTIONS  
PRISON ISSUES BOARDS MEETING  
Cascade County Correctional Facility  
3800 Ulm N Frontage Rd  
Great Falls, MT  
February 25, 2020  
10:00 a.m. to 3:00 p.m.  
Minutes**

Begin: 10:15 am

Roll Call – Director Michaels, Warden Lynn Guyer/MSP, Pat Smith/CPB, Robert Wilson/GFRP, Alex Schroeckenstein/MWP, Cecily Simons/CCC, Gayle Butler/MCE

Others via telephone & vision net/skype –Captain Barthel, Laurie Mills

There is a quorum present.

“In accordance with Montana Code Annotated Section 2-3-103(1), the Board will hold a public comment period. Please note that this open forum period for comment is the public’s opportunity to address the Board on any topic that is within the purview of the Board. While the Board may or may not take action on the issues presented, the Board will listen to comments, may respond to questions, may ask that questions, or comments be submitted in writing, and may ask that the issue be placed on a subsequent agenda for possible discussion by the Board. The Chairman of the Board will determine the amount of time allotted for public comment.”

“Pursuant to Montana Law, the Chairman may decide to hold a meeting or part of a meeting in executive session due to interests of individual privacy, or individual or public safety or security of public facilities, including jails, correctional facilities, private correctional facilities, and prisons, if disclosure of the information may jeopardize the safety of facility personnel, the public, or inmates of a facility.”

In addition to the above people, the following were present:

Cindy McGillis-Hiner, Kari Alstad, Kurt Aughney, Pat Schlauch, Noah Hatton, Chris Conell, Angela Weddington, Carolyn Bright, Colleen Ambrose, Roger Renville, DJ Godfrey, Nicole Tierney

Members of the public present:

Laurie Lynn Little Dog, Benton Little Dog, Randall Knowles, Viola Lewis, Richard L. Shreves, Traci Rosenbaum

Approval of minutes from the last meeting,  
Moved to approve the minutes – Gail Butler  
Second the motion – Warden Guyer  
All in favor- Motion approved

### **Legislative and Management Team Updates- Director's Office**

**Director Michaels**-Beginning work for next Legislation Session. Thank you to all for the continued work on jail hold numbers. All facilities are filled to max capacity. Always a work in progress. We are continuing to work on programming but still struggling, if anyone has any ideas to help with that please let Director's Office know. There is a new Warden at Crossroads. Comes to us with a very impressive background and some connections to Montana. Expecting good things with the background he brings to the table. Doing work on Locked Housing protocols and that will continue. Still facing many challenges. Will be going to Legislature to ask for help with the structure in these new requirements to allow us to move forward in compliance.

### **Secure Care Updates – Warden Lynn Guyer and Warden Hansen**

MSP Facility underwent an assessment for maintenance issues by the Department of Administration, working on having a signed contract with Carter Global, an architecture outfit to help design our future planning. Will also be working with MWP. We will be taking this information to the upcoming Legislation. Our men's facility has been over capacity for over 40 days. We are extremely short staffed in all areas. Due to the severe staff shortages we are seeing a large increase in narcotics and homemade alcohol inside the facility. Shortages in staff creates holes for offenders to get contraband inside.

MWP has 228 general population beds and the numbers currently running at about 225/226. MWP is also dealing with the same staff shortages. Boiler project is just about complete. Will also continue to work on the locked housing initiative and changes.

### **Review of Locked Housing- AW Godfrey**

Locked Housing has put out a lot of new things in the last few months. We have new "door sheets" so all requirements are now listed on ONE sheet. Officers can also make notations/feedback for better staff/offender communication. Started an expansive New Freedom packet with two different assessments. TCU assessment when they start and a MORRA at end. SAU is now a step-down unit to integrate back into general population. Have provided staff training on how to fill out all new paperwork. Will continue training and education as we continue to evolve and work out kinks in this new restrictive housing project.

New form "Criteria for Placement". This form is only used for RHU long term placement. Form is approved per Captain of Housing then is passed to Multidisciplinary Team for the final decision. Our numbers are now trending down with this new system.

"Restrictive Housing Hearing" - This form is presented along with the Criteria form. This is NOT a disciplinary hearing but rather a chance for the offender to participate in their behavior and housing/placement that would be the most constructive to benefit everyone. The hearing happens after the referral is made after initial lock up. This hearing is completely different from disciplinary hearing. This is under the locked housing procedure. We will add the policy numbers and what attachment on the sheets. Remember this is a work in progress.

“Restrictive Housing and Secure Adjustment Housing Unit Status Review” This form is for the case manager to review at 30 days and 60 days. It gives the management team and offender a great opportunity to review where offenders are at and where they need to be.

All these forms will be in the offenders mini file under the disciplinary section. The main goal is to have all this info located in OMIS under a Restrictive Housing tab.

30-day review committee form is completed again by the multilevel disciplinary team.

The levels of RHU placement is only levels 1-4. Each level has requirements in which the offender must meet. Offenders are always allowed to continue their schooling/education. RHU and SAU get tablet time every other day unless they have done something to lose that privilege. Total time on levels has decreased. Level 5 is now for our death row offenders, and some offenders that have committed major offenses and are violent.

We are still making changes such as getting tables, desks, new yard, group equipment. At this point we are waiting on good weather to pour concrete for the outdoor items. If you have any questions, please contact AW Godfrey or Sara Smathers. If you notice needed changes, mistakes, or have suggestions, please reach out.

MWP has done some training but is anticipating more as this process goes further.

At MSP we will have 3 layers at first and are now working on staff that is ONLY Restrictive housing. Training will then go further in depth on all these new adjustments. There are many stages to this. Offenders will also need training as this is new for them as well. These new door sheets make staff connect with offenders for 5-15 minutes. Will be doing skill set training sessions for staff and offenders. Long term we eventually want to incorporate this throughout the whole facility.

AW Godfrey has been traveling to various states as well as speaking to other state prisons. He has looked at South Dakota and Virginia a lot. There was a lot of research in devising this new plan. We had to take bits and pieces from each due to the differences in size and resources. All states have had some push back from offenders, not just MSP. The average has been 6-9 months before it all started coming together.

**Roundtable Discussion on Inmate/Facility Issues- Feedback by All**

**Legal (DOC)-** is still trying to resolve the ADA Langford settlement at MSP. Trying to address barriers including in programming. Have recently come across an offender who is deaf, having difficulty finding resources. Also working on training staff on ADA accommodations and how to process requests. Urge all facilities to be aware and alert to offenders with all types of disabilities. Also, currently in litigation of severely mentally ill offenders. RHU movement is a step in the right direction. Had several complaints filed at MSP and MWP for discrimination regarding access to religious activities and retaliation to filing complaints. Contemplating a process to follow up on the retaliation. Recent HRB case from Stuart Lawrence we are drafting a new discrimination and harassment, retaliation to include inmates. There are no new policies, rather existing ones will be clearer across the board. We expect to offer that to the Director for signature in the next 45 days.

**AW Godfrey (MSP)**-Programming on low side that is extension of the HS pilot program. Evidence based programming is now running on both Low and High Side. Staffing is still low. Have had 2 decent sized groups of new hires in training. We are really working on recruitment. Happy to share ideas! We have done research on different mailroom options that include inmate email and scanning to make offender mail more secure. Have looked at a few body scanners in Missoula, going to Billings and Bozeman to look at some more in near future. Great Falls just installed a new one. Has items for closed session.

**Alex Schroeckenstein (MWP)**-Working on getting staff trained to get some groups up and running. They are also short staffed. Similar process for their locked housing. Family day for MWP is tentatively the second week of June. Admin gate in front of the building is still not fully functional. Working on this.

**Gail Butler (MCE)**-Hired Canteen staff member to help with hobby orders to cut OT. CAMPP Grant has hired a coordinator. Will start the first 16-week camp. Children will come out for 3 days and then the fathers will get to come out during the day. Will also reach out to other facilities. Only 8 grants given across the country and we were one. We are taking applications then working with DPPHS to verify. Intense screening process. Do not have to be in foster service but that is where the system focus is. Have lots of goals to achieve. Please feel free to ask questions.

**Cindy McGillis-Hiner (CSD)**-RFP for EMR for all offenders. Next week is the Eastern MT Assisted Medication in Billings. Riverside is going well and full.

**Cecily Simons (CCC)**-New Warden has been at the facility for two weeks now. Has a wealth of experience and brings a lot to the table. Very much a programming guy. Staff is excited. PREA audit is in two months. Our recruitment team is going to a major hiring event in Seattle. Our company will have a big showing there. We are hopeful for a positive outcome. Habitat for Humanity is up and running. Inmates participating are very excited. Have A-squad and B-squad. Welding has started, curriculum from Havre has been given to us for free. CCC is excited about all these new projects.

**Kurt Aughney (DOC Central)**-PREA is about a month out for mock audit in March. Nevada will come in and do Federal audit at MSP in September. Actively doing audits around the state. Gearing up to start second round of security audits. Griffin Burns is new policy manager. As of Monday, will have a vacant position.

**Pat Schlauch (DOC Central)**-Continue working on budget issues and requests. Currently working on Welding Simulator deal that was verbally approved. Once there is an actual cost associated, we will go forward from there. County jail contracts are out, doing the best we can with our current numbers. Roughly 30 contracts out there currently.

**Robert Wilson (GFRP)**-New operating control boards are going into all locations. New tablets are being set up. Hopeful this will help with video visitation. Recently implemented a hot food service where families can call in and order meals on Sundays. Have some programming up and running now, like Anger Management. We are also experiencing staff shortage issues.

**Noah Hatton (GFRP)**-Federal PREA audit was last month, still waiting on report but all indications were good.

**Captain Barthel (DCCF)** - Staffing is low but better than a few months ago. Have shower curtains and working on all the units.

**Laurie Mills (DCCF)**-Ready to start T4c and complete in March to start another one in April.

**Pat Smith (MSP)**-Religious Activities Committee has brought forth a proposal for additions to RHU and SAU. These are personal property requests for levels. (Attachment) All in favor, APPROVED.

#### **IWF Accounts, Global Fund Updates, Requests and Funding Reviews -**

Spending through January 2020 see attached. IWF funding requests; None from Cascade, None from Dawson, None from CCC, None from CSD, None from MWP.

MSP is seeking money for benches in low side units and yards. Replacing the outdated old benches. Sizes of tables will be reduced from 10 ft to 8 for security purposes. \$32,085.66 is what the request is for but will need to submit a bid. Gail Butler will find out what MCE can do, not to exceed the above cost. If that can't be done by MCE then will go out to bid for outside vendors. While reviewing options it important to make sure that they are all ADA compliant. Gail Butler makes motion to approve \$32,100.00. Alex Schroeckenstein 2<sup>nd</sup> motion. All approved. MSP, Cascade and CCC will have more requests at a future date.

#### **Public Comment Period-Began 1320-1345**

**Richard Shreves**- Son has been in prison for 20 years, housed here is Cascade and MSP. IWF could pay for increased amount of fiber optic to have more capacity for tablets to let offenders use tablets longer. He used to work for job service and hopes that DOC will use Job Service for nationwide recruitment. Mail is an issue. It is being returned without reasons. The public should be told why it is being denied. Would like to ask again if we can have stamps and mailroom either tear off the stamps or make a copy of the envelopes and throw the envelope away. Why are offenders not being checked when they leave the chow hall? Why do all get punished when only a few are making pruno? A lot of the inmates don't know who the admin staff is and who they need to speak with. All admin should visit the units weekly.

**Benton Little Dog**- Dad is in prison. Does not think that the Warden should be able to cut a Native American's hair or people of color. People don't understand why Natives wear their hair long and that it is a part of their religion. In 2020, it is not acceptable for a government funded prison to cut a Native's hair. You have no right to cut hair or beards for contraband. This policy is breaking laws that your people and my people died for. Please remove the policy that was approved.

**Laurie Little Dog-** Second year on the prison board tour. Some things have been brought to my attention that were not clear. Mail is still an issue. I have been very rigidly sticking to the policy and am upset that they keep being denied. My husband was attacked by 8-10 security officers while walking out of showers too fast and did not obey an order. He went to the hospital and suffered severe bruising due to this. I have the mail that was denied if anyone wants to see it. Rec yards are not done, you have missed the deadline that Legislature set. I have been asking for the new definition on the "Severe Mental Health" term and have no answer. I have been trying to meet with Harlan Trombly and have had no response. If he no longer is employed post his job so others can fill it. Husband received a 6-month suspension from visitation because his hands were still cuffed but slipped his belly chains. Cuffs and shackles are not necessary when in a locked room. Would like consideration to redo visitation. Husband tested dirty for marijuana, that was also met with a 6-month visitation suspension. It is on the staff to find the drugs so the offenders who have substance issues do not get them. They are not being treated for their addictions until the end of their sentences. Excited about the RAC additions, MDIU is still an issue in that it does not let Natives practice their faith. Very upset over the hair policy. It needs to be handled in a very respectful way. "Dog runs"-language and culture of MSP and staff need to be sensitive to the fact they are humans not animals. Members of community are upset about the wage that inmates make and the profit that MCE is making. Where is that money going? Maybe should not ask Legislation for more money but look at our own funds.

Next meeting to be held in Shelby in May. This has been postponed due to COVID-19 issues. A meeting time will probably be set in July, probably using Zoom.

Meeting adjourned 1:48pm



**DEPARTMENT OF CORRECTIONS  
PRISON ISSUES BOARDS MEETING  
Dawson County Correctional Facility  
Glendive, MT  
September 24, 2019  
10:00 a.m. to 3:00 p.m.  
Minutes**

Roll Call – Director Michaels, Warden Lynn Guyer/MSP, Pat Smith/CPB, Robert Wilson/GFRP, Warden Jennie Hansen/MWP, Warden Tom Green/DCCF, Warden Steve Ray/Pine Hills, Warden Pat McTighe/CCC

Others via telephone & vision net/skype –Deputy Director Cynthia Wolken, Colleen Ambrose

There is a quorum present.

“In accordance with Montana Code Annotated Section 2-3-103(1), the Board will hold a public comment period. Please note that this open forum period for comment is the public’s opportunity to address the Board on any topic that is within the purview of the Board. While the Board may or may not take action on the issues presented, the Board will listen to comments, may respond to questions, may ask that questions, or comments be submitted in writing, and may ask that the issue be placed on a subsequent agenda for possible discussion by the Board. The Chairman of the Board will determine the amount of time allotted for public comment.”

“Pursuant to Montana Law, the Chairman may decide to hold a meeting or part of a meeting in executive session due to interests of individual privacy, or individual or public safety or security of public facilities, including jails, correctional facilities, private correctional facilities, and prisons, if disclosure of the information may jeopardize the safety of facility personnel, the public, or inmates of a facility.”

In addition to the above people, the following were present:

Sheriff Ross Canen, Billie Reich, Chris Briscoe, Kari Alstad, Pat Schlauch, Noah Hatton, Nicole Tierney, Laurie Mills, Kiela Harris, DJ Godfrey, Chris Conell, Kurt Aughney, Michelle Hauer, and Cindy McGillis-Hiner

Approval of minutes from the last meeting,  
Moved to approve the minutes – Warden Green  
Second the motion – Warden McTighe  
All in favor- Motion approved

Welcome and introductions. We have one official guest today-Rick Kirn, Executive Board Member of the Fort Peck Assiniboine and Sioux Tribes who also serves as a board member of Crime Control for 18 years. Would like to extend his invitation to all of us to visit or ask questions any time. We thank you for being here at PIB today.

### **Legislative and Management Team Updates- Director Michael**

Met with the Law and Justice Interim Committee recently. Primary concerns were about the Board of Crime Control and transitions from DOJ to DOC. Director Michael has been traveling to all the reservations to meet with Tribal Counsel and leadership within the reservations as an introduction and to answer questions in hopes of better understanding their needs and the challenges they face. Due to the large numbers of Native Americans within the justice system we have been traveling to many of the reservations to try and get ahead of some of the cultural issues within the dynamics of these populations. The Native American population is about 6% in Montana. The Native population in men's facilities is about +20% and +30% in women. The process of new evidence-based programming is still progressing. The 2017 Legislature gave us a Justice Reinvestment Initiative and we have not done as well as we could have so they have challenged us to do more/better with our locked housing units. Using more tools, trying to focus on less prison time and more supervision. Our goal is to have the prison population decrease in the next 10 years. We applied for a technical assistance grant for Locked Housing and how we manage that population - we did not get that grant. The Legislature demanded we do more than we are currently doing. We are working towards getting them out of the locked cells and giving them a pathway to work towards General Population if their behavior allows. This really needs to be a positive team effort. We did have a grant come through with DOJ sponsoring it, called "CAMPP" Connecting Adults and Minors through Positive Parenting. This is a \$700,000 grant to help incarcerated parents reconnect and build meaningful relationships with their children. There are still several questions in the air regarding this grant such as: Will this new grant be part of an evidence-based program? Who is going to be in charge? Is this only for adults? We are currently seeking those answers.

### **Secure Care Updates – Warden Lynn Guver**

Legislation mandated shut down of MSCTC unit. We have moved SOP offenders to what is now Unit F. Compliance Manager interviews are happening to help with the locked housing initiatives. Construction in Locked Housing and associated yards are still in progress. We have started planning programming instead of just locking offenders up. We will be moving away from automatic lock ups due to verbal issues and will try to redirect. Twenty-two inmates have volunteered for a new pilot program and it appears to be working well so far. Locking people up is not working so we need to address the issues as they come up not jump straight to lock up as first response.

Cindy Hiner announced that the previous Lewistown offenders, twenty-one, have moved to Riverside. She is very happy with the direction of this new facility. There are great opportunities for the older population.

Warden Hanson is piloting some changes in her locked unit. They have initiated more programming and serious violations have decreased. They are using gender specific programming. MWP went through the federal PREA audit and passed with NO violations in this audit.

Warden Steve Ray uses a performance-based practice. They are taking statistics and sending them in to compare to other states. This is a very difficult to transition for the officers. They found the more you lock people up the more violence there is. The only reason someone should be put in confinement is if there is immediate danger to security of the facility. After training for officers and building up programming they have cut incidents down from weekly to every 6 months. There is some difference between adult and children, but all movement should be the same end game.

Warden Guyer said MSP is still in emergency staffing and over population. They are now at 21 days of over emergency capacity. Have been doing recruiting events for last few weeks, sending a team out, but can't seem to get the bodies to come in. There is a lot of wage competition that keeps people from wanting to apply. DCCF is 7 short which is almost one full shift. The unemployment rate is at 1.4 %. Staffing is an issue everywhere. Pay rate is the biggest issue.

#### **Review of Annual Grievance Report – Billie Reich**

Big changes are coming in locked housing. At MSP, we are looking at procedures and policies and figuring out how we will accomplish at least 2 hours out of cell time per day. Working on tracking system with IT to capture all the required data. We are updating our level systems and will have to do more training for CO's and Sgts. We also hope to change LH2 to a transition unit to help reintegrate inmates back into general population. MSP will have more availability to programming. Will try to take the locked housing population down to 40%. Staff have been looking at several other state's plans to include new door tracking sheets, for easy access for statistics. A secured yard is in process of getting completed. We also created two locked housing yards and a new yard for mentally ill offenders in High Side. Still keeping a level system. The only changes will be out of cell time.

PHC is carved out in the new statute. We are drafting the new policies and procedures. It's moving forward and once finalized with legal, it will go to the Director. The procedure needs to be reviewed by the regional facilities, so they are aware and in agreement of how to move forward.

#### **Approval of Security Chief's Property and Canteen Annual Reviews- AW Godfrey**

We have a finalized matrix so all of canteen numbers are the same. There are some gender specific items. Undershirts are only allowed in cells. Headbands are allowed for men and they are only allowed in the recreation yard. Women can order black tanks, but men can't. Sports bras are available for the men. The differences are the on-person amounts at MSP. There were some changes for beards lengths – they can now be grown up to five inches. The hair restrictions have also loosened up, unless caught with contraband in the beards or hair. This change was taken out of the RAC rules and place into personal hygiene procedure. DJ will get with Angie and get that out to all regionals. Angie will take on an updated inventory sheet/property matrix.

#### **Roundtable Discussion on Inmate/Facility Issues- Feedback by All**

DCCF/Warden Green – they are having staffing issues – the facility is currently 7 officers short. Trying to have PT/Temp staff in control centers. This is the first year the facility hasn't been able to complete the horse program in 20 years. This was due to the staff shortage. The garden program was successful this year. The facility continues to work with DOC on the grant for maintenance updates. They are hoping to use some of those funds for roofing repairs.

Laurie Mills – DCCF Contract Monitor – We are getting parenting classes, T4C and anger management going again.

MWP/Warden Hansen – the tablets have not worked for 2 weeks. Warden Hansen asked if Helena could help with Century Link and getting equipment working. The Director asked when the contract is up with Century Link. There are several issues with all facilities. A repairman must come out weekly to DCCF.

CSD-New Mental Health Bureau Chief Stephanie Turner started last week. The next project is staffing and learning about medical assisted treatment to help with addiction.

Budget – For Dawson's funding for capital improvements, there is a MOU that will involve three entities - MDOC, A&E and DCCF. They are all working on how we want to pay those invoices. Per diem rates going into FY 2020 & 2021 will have changes that will affect DCCF and GFRP. Anything costing over \$5,000 the facilities will want to meet with DOC before anything happens so everyone is aware of it. Any long-range capital costs make sure it gets to Pat Smith to take into the next session.

Pine Hills/Warden Ray - when the kids leave, they used to go to P&P and now they go back in front of the judge. The adult jail side continues to be full. Currently it's at forty-four. They are adopting three more mustangs. They are also working with Gayle on setting up a ranch/cow program that will be coming forward in the next year.

Kurt Aughney - Michelle Hauer is back as compliance manager. They will have new policy manager in October. There is a statewide PREA training/conference in Helena in November. Also, PREA investigative training will be in Helena in October. All facilities were compliant for federal auditors. Montana was one of the only states that was fully compliant in the first 3 years. They are gearing up for full MSP mock audit in May 2020. Federal PREA audit training is opening and we currently only have 1 in Montana. The second round of the treatment audits is coming up. Any new evidence-based programs must be submitted to DOC for review by the committee.

CCC/Warden McTighe – they have partnered with Great Falls Habitat for Humanity to help build walls. Wood has been purchased and inmate workers will be trained and certified through this program. A welding instructor will be starting soon and developing a welding program.

GFRP/Robert Wilson – Great Falls is getting the GED program back and T4C up and running. These are two previously approved programs that are slowly getting back. They just need to finish training. They are also reevaluating the way they do things. They are seeking a culture change at the facility as well. They are very open to communication and learning. They are also advocating for new inmate jobs.

Chris-Wanting to hit the facilities as much as he can to learn what he can about each position. Welcome Chris.

MSP/AW Godfrey – Visitations have gone to scheduled only. People can call if there are issues with the online set up. It's not just online visiting at MSP. Last month there were 666 visitors. There were some issues with the computers being down, but since the lists were all sent out, it went ok. The programs on the high side at MSP are going well.

Pat Smith - RAC committee meeting notes made available to the administrators. He passed a handout of what was approved. Motion to approve Warden Hansen, 2<sup>nd</sup> Lt. Wilson seconded the motion. It was approved as presented.

**IWF Accounts, Global Fund Updates, Requests and Funding Reviews - Chris Briscoe & Kiela Harris**

The amount in the global fund is \$1,226,747.49. This is a prorated amount. Chris doesn't foresee any changes. For now, this fund is statutorily protected. That could change. It might be a good time to reevaluate the IWF funds policy and what gets paid out of the fund. It's also a good time to look at limits and what can be approved and the time limits of incarceration. It's been about six years since the last evaluation. Pat will put it on the next agenda for review.

Purchasing said this morning, if the requested amount is over \$5000 and under \$50000, instead of doing bids, we can get approved at the Prison Issues Board. Once approved, they would be sent to Val and she will send the requests out to venders and contact appropriate individuals through E-Max.

Pine Hills – in the spring, we tentatively approved equipment for Pine Hills. There is now a list presented by Superintendent Ray asking for a total of \$17,564.48 worth of equipment to be taken from the global fund. Warden Guyer made the motion to approve the request and Warden Green seconded the motion. All were in favor, and the motion was approved. There was also \$5000 from MSP and CCC IWF funds to go to the Pine Hills account to get them started.

MSP – requesting a replacement ice machine for high kitchen. It cannot be fixed and just need to be replaced. IWF bought the original ice machine many years ago. Just needs to be replaced, IWF bought the original one many years ago. The total requested is \$14,000.00. Warden Green made the motion to approve the request and Warden Ray seconded the motion. All were in favor and the motion was approved.

MSP - requesting exercise equipment for locked housing, Unit F, the high side and Riverside. The request is for roughly \$94,000.00. There will be an extra expense for a concrete pad to be placed at Riverside for the equipment. All equipment is ADA compliant and there are no free weights – it's all cables. Warden McTighe made the motion to approve the request and Warden Hanson seconded the motion. All were in favor and the motion was approved.

CCC – no IWF requests at this time but will have some coming.

MWP – requesting to update some gym equipment. Asking for three sets of 25lbs free weights, a weight bench and five treadmills for a total of \$16,554.40. Warden Guyer made the motion to approve the request and Warden Green seconded the motion. All were in favor and the motion was approved.

DCCF – no IWF requests.

**Public Comment Period-Began 1335-1400**

Rick Kirn-On the reservation we are also having hard time with staffing. He introduced Ron Jackson who is the Director for Natives. He is from Poplar, MT with 26 years of law enforcement. He oversees an 88 up to 110 bed jail. The jail is meant only for holding. He offered an open invitation to come tour the jail. All staff must take Cultural Sensitivity training and Jurisdiction training. He spoke about the botanicals used and said it is not always tobacco in the pipes. It's called tobacco, but its roots and flowers from everywhere. If you sit with the Assiniboine, you are considered a member. They have many rules they must comply with as well. They also lose workers due to drug tests and issues with drugs. We share a common ground and goal is to correct it. They average 77 offenders with 14 staff members.

Laurie Littledog- Changes in weather and MSP had a heating crisis. Please look into so inmates don't suffer. Locked housing is cold, Locked housing can't have the same shoes that they have paid for. Slippers are not warm enough. In locked housing inmates can't use legal and send out legal or make copies. Husband has been denied legal mailings. Gave a C/O legal letter on Sep 10<sup>th</sup> and lawyer has not received it. Mental health is deteriorating. Used to take her son for 5 hours for visiting and now can only be seen behind glass. Has to home school son now because of visiting issues. Can only call from 7-8 in the am. The Directors are not available, DOC has gotten rid of policy for public. Now feels they must go to Senators. Claims there are 14 staff answered kites in his cell, but spoke to Nicole and reported that there is only 1 grievance filed in our system. Retaliation is real and is happening to him daily. Has asked to smudge individually or communally. Was told by the RAC that he can't smudge due to security level through RAC staff. Why is Sweet Grass not allowed and would like to have a copy of the RAC meeting notes? Would like to have a Native liaison from different tribes to represent all Natives at the DOC. The new hair policy is unclear, and DOC has no rights to cut Native American hair if found guilty of contraband. Cutting hair is seen as an assault. Natives will kill themselves if their hair is cut.

Little Dog's relative – She came from California to see her Grandson, she is told he can't smudge and may have to cut his hair. Natives haven't had their religious freedom for 100s of years. What is wrong with burning a little Sweet Grass in prison? Been to many prisons and have never heard of not being able to practice their religion. If we don't respect one another's religion, we will never get along.

There were other public comments that were sent in by mail or e-mail and will be separate attachments to the minutes.

#### **Other Security/Confidential issues if Needed**

The meeting was closed for a short session due to the Chairman decided to hold part of the meeting in executive session due to interests of individual privacy, or individual or public safety or security of public facilities, including jails, correctional facilities, private correctional facilities, and prisons, because disclosure of the information may jeopardize the safety of facility personnel, the public, or inmates of a facility.

Next meeting will be held in Great Falls at the Cascade County Detention Facility, tentatively on the 28<sup>th</sup> of January 2020.

Meeting adjourned 2:25pm

**DEPARTMENT OF CORRECTIONS  
PRISON ISSUES BOARDS MEETING**

**Department of Corrections**

**Helena, MT**

**January 22, 2019**

**1:00 p.m. to 4:00 p.m.**

**Minutes**

Roll Call – Director Michael, Gayle Butler/MCE, Warden Lynn Guyer/MSP, Pat Smith/CPB, Travis Harris/GFRP, Warden Jennie Hansen/MWP, Pat McTighe and Cecily Simonson/CCC

Others via telephone & vision net/skype – Warden Tom Green/DCCF

There is a quorum present.

“In accordance with Montana Code Annotated Section 2-3-103(1), the Board will hold a public comment period. Please note that this open forum period for comment is the public’s opportunity to address the Board on any topic that is within the purview of the Board. While the Board may or may not take action on the issues presented, the Board will listen to comments, may respond to questions, may ask that questions, or comments be submitted in writing, and may ask that the issue be placed on a subsequent agenda for possible discussion by the Board. The Chairman of the Board will determine the amount of time allotted for public comment.”

“Pursuant to Montana Law, the Chairman may decide to hold a meeting or part of a meeting in executive session due to interests of individual privacy, or individual or public safety or security of public facilities, including jails, correctional facilities, private correctional facilities, and prisons, if disclosure of the information may jeopardize the safety of facility personnel, the public, or inmates of a facility.”

In addition to the above people, the following were present:

Colleen Ambrose, Kari Alstad, Stephanie Hotchkiss, David Klajic, Pat Schlauch, Kathy Ralston, John Daugherty, Elain Dahl, Alicia Tangen, Paul Szczepaniak, Nicole Tierney and Alex Schreckenstein  
Laurie Mills via Skype

Approval of minutes from the last meeting,  
Moved to approve the minutes – Gayle Butler  
Second the motion – Warden Guyer

All approved

Welcome and introductions.

**Legislative and Management Team Updates**

Director – We are engaged in efforts to develop a long term strategic plan for DOC. Defining goals and direction for next 3-5 years. Defining milestones and outcomes. Focusing from beginning to end making changes where needed.

We have four DOC bills. HB111 is a bill to transfer parole supervision of certain youth to youth court. SB62 is a bill to revise inmate welfare fund laws to include Pine Hills. SB37 is to revise laws related to recording of parole board hearings. SB36 will provide exceptions to the inmate mandatory savings.

Gayle Butler said SB36 passed the Senate unanimously. SB62 has passed and is now in appropriations.

MCE is in the middle of subcommittee hearings right now. There were good questions asked and the subcommittee seems receptive to the Department. Everything looks well for now.

**Secure Care Updates – Warden Lynn Guyer**

Warden Guyer introduced himself. He is a 30-year veteran of from the Idaho Department of Corrections. He spent seven years as a Probation and Parole manager and Community Work Center Manager. He also has served as a

senior P&P Officer, an employment development coordinator and a line level correctional officer. He is getting to know staff at MSP. There was a legislative tour of CCC and the Warden was on the tour. Usually not a lot of people show up for these, but over twenty showed up. This was good for the people on the tour, so they can see what we do. CCC is a finely run facility - you can tell when you walk in the inmate areas. There was also an exhibition of the dog program.

### **Review of Inmate Assignment Policy – Warden Hanson**

At last meeting we talked about 5.1.1 for smaller facilities. The way the table was set up was impossible for the women's prison to follow. MWP has 4 laundry workers and they don't make as much money as the kitchen workers. They lose inmates to the kitchen as result. There was also some language that was inaccurate. "Inmates pay may not be more than a full day's assignment". This part was re-worded, and a line was added in the inmate compensation table. The changes exclude MCE. MCE has their own pay policy. All jobs can be made a daily rate and verbiage about full day and hard to fill positions. Previously, the policy said you could have only one job, but there are facilities where inmates have more than one job. Warden Steve Ray said there is also a separate policy for Pine Hills about inmate pay. Cecily Simons asked if there is a definition of the skill and levels. DJ Godfrey said the facility can determine the pay regarding skill level. Cecily Simons said there is different equipment at MSP compared to CCC for certain jobs. DJ Godfrey said we must work towards getting different positions added into OMIS. The positions would fall into categories. John Daugherty said the facilities should work with Pat Smith regarding the positions. All the other jobs go through the Wardens. Travis Harris said Great Falls is okay with the current job table. Tom Green from DCCF, MSP, Pine Hills and MCE are also okay. IT will go through one more review process and then Pat Smith will send it out to everyone for approval.

### **Roundtable**

Warden Steve Ray – Pine Hills

The Director has asked for Warden Ray to be a permanent member of the board. Pine hills has some things before legislature. They are trying to get things taken care of. Things are going good at Pine Hills. The population is about 103 – with 66 adults on campus. They now have horses on campus thanks to MCE. This is going very well. There were some issues with the inmate phone system. The phone system at MWP also has daily problems. Pat Smith asked if it is related to cut offs. Warden Ray said it is everything. John Daugherty said to send the issues to himself and Pat Smith so Century Link can address the problems. Warden Ray said Century Link has been very responsive to the issues.

Cecily Simons - CCC

Very good visit and tour with the legislative group. Warden McTighe and Cecily just returned from a conference. They are waiting on new programming, so the facility can start moving forward. The assistant warden position is still open. They hope to have it filled by the next meeting.

Warden Jenny Hansen – MWP

Things are going well at MWP. The gift bag hand out over the holidays went well. They are getting new employees from the Lewistown Infirmary. They have a new HR person that is going through NEO. They should have him on sight next week.

Pat Schlauch - Budget

There are a couple things from the session. The teams are doing presentations right now. We ended FY18 having to borrow a substantial amount of money from FY19. We will have a supplemental request. We do have some requests in budget for the rates for the regional prisons that were frozen during the last session. We are looking to change to the actuals costs for FY20 and FY21.

Kurt Aughney

Recently sent CCC their license to operate for 2019. Working with a lot of people on updating the locked housing policy. Getting ready to start audit cycles for the regional facilities.

Travis Harris - GFRP

Cascade County has a new sheriff. They are currently changing some stuff within the jail. They are down 11 employees and recruiting.



DJ Godfrey

Beginning in February/March – they will be going around the facilities with PREA compliance checks. Tomorrow they are going to Great Falls to train employees with the parole reports. They will be headed to Pine Hills and MWP in the future.

John Daugherty

The Lexis Nexis project wiring has been ordered. They don't have an ETA from the Department of Administration. When they were remodeling the Riverside building to move the Lewistown inmates, they had an asbestos issue. They are looking at March to move the offenders unless there are other issues.

Director Michael

Programming – we now have a short window and will have to start working on CCC contract with the programming piece. We have until July 1st, fiscal year, to have this in place. Looking at the bigger picture, the programs have to be evidence based. The Director asked what the committee is doing. Kurt Aughney, who is on the committee answered. They have been working with the contract facilities. The programs that are coming from MSP are going through the committee. The website shows who is on the committee and what programs are available and the process of how to get new programming. Training recently put on at DOC was about how to effectively communicate with inmates. There is a second training in February. This is a three-day training. There will be some additional training June. This will be more focused on small programs. They are looking forward to working with Shelby now that we have a contract. They are looking at going to MWP for pre-audit. Pine Hills did a great job. The Director said there is a law we are mandated to follow regarding programs. We will have to begin to audit and review this programming and our processes. We have just begun to do this. The law requires us to deliver evidence-based programming. If anyone has questions, please contact Kurt Aughney or Erika Wimmer.

Gayle Butler – MCE

The tablet committee is working on forms. If you want to add to the tablets, there is a form to fill out and sent to the committee. This form is done and should be available in the next couple weeks. Dawson is the only other facility with tablets. The tablets have been a great program for MSP.

Warden Tom Green – DCCF

They have been tuned into the Legislative process to get some budget things fixed for the department. Programming is going well. They have a new case manager who is going through training. The inmate phone system has a lot of issues. They have been contacting Century Link almost daily. The new IT person for Century Link is in Western Montana. The tablets are up and running. The inmates are requesting to print certificates. Video visitation is looking at the end of January. Staff wise, they are one short. Patrick Smith said the committee has decided to go with transcripts instead of certificates for every program. They can print transcripts of all completed programs when they are going in front of the Parole Board or when leaving for the community.

#### **IWF Accounts, Global Fund Updates, Requests and Funding Reviews - Chris Briscoe**

Chris has been busy with the legislative stuff. She will send DCCF's IWF summary to Warden Green via email. Chris passed out the summary of the global fund. The fund pays for rent, bus tickets, etc. The actual amounts are on the summary. All the facilities contribute toward the global fund because it does not have an independent source. Gayle Butler said if SB 62 passes, then Pine Hills will be on the list for global fund for inmates. Chris Briscoe asked how they would contribute to the fund. Telephone and canteen revenues from Pine Hills would be added into the global fund. Language will need to be changed to address Pine Hills inmates regarding how long they are in custody prior to access to global fund. This needs to be reviewed also for MWP.

Chris Briscoe said there is a contingency if the fund runs out for DCCF.

FY20 budgets need to be reviewed by the reps and have them ready to go for the next meeting. This is the meeting where the IWF budgets are approved for the next fiscal year. Chris will work with Warden Ray to get Pine Hills IWF ready. Patrick Smith said CCC still needs sound barriers in the gym. CCC has several requests coming. They will get these to Pat Smith and he can email them out to the group or present at the next meeting.

Chris said there is also a bill to increase the cost of birth certificates.

There is an IWF request from UM Michelle Steyh. The request is for additional plastic chairs for B Unit. She wants to order 98 additional chairs for a total cost of \$4757.90.

Travis Harris moved to approve the request  
Warden Hanson seconded the motion.  
All approved – none opposed.

There were no other IWF requests

#### Public Comment

John Ruff – he had a number of issues, which he typed out for the committee. These were submitted to Patrick Smith

Laurie Little Dog – Laurie has four issues. The first issue is that high side inmates don't have access to programming. The second is discrepancy with clinical services. The third issue is the amount of DOC Commits being held at MSP. She also has an issue with DOC and how issues are taken care of. She knows of several people who have sent in issues. Do they ever get addressed? Also, the phones make you deposit .50, but they are charged much more than that. Does this money go to the inmates? How is the IWF money used.

#### Rosemary Shively

The mail takes 3-4 weeks. Her inmate was in Lewis & Clark County for several months. Since that time, the quality of meals has gone down significantly. Also, the Parole Board requires inmates to finish classes, but the classes are not available at that facility. The inmate had to wait a year to get into the course. He is taking a language course of the tablet and loves it.

Other public comments will be provided by attachment.

Warden Hanson – at MWP the foreign language courses were removed from the tablet because some offenders found a way to input messages. The company who makes this application has fixed the problem. Gayle Butler said they gave the tablet company the go ahead to put them back on everywhere.

The meeting was placed in executive session for the remainder of the time due to the Chairman's determining that the topics coming up involve rights of privacy or safety and security issues that outweigh the public's right to know.

The next meeting will be held at MWP in Billings in May. The exact date and time will be decided as we get closer to May. Meeting adjourned.

**DEPARTMENT OF CORRECTIONS  
PRISON ISSUES BOARDS MEETING**

**Montana Women's Prison**

**Billings, MT**

**June 05, 2019**

**10:00 a.m. to 3:00 p.m.**

**Minutes**

Roll Call – Director Michael, Gayle Butler/MCE, Warden Lynn Guyer/MSP, Pat Smith/CPB, Captain Kaululaau/GFRP, Warden Jennie Hansen/MWP, Warden Tom Green/DCCF, Steve Ray/Pine Hills and Warden McTighe/CCC.

Others via telephone & vision net/skype – Warden Pat McTighe, Deputy Director Cynthia Wolken, Colleen Ambrose

There is a quorum present.

“In accordance with Montana Code Annotated Section 2-3-103(1), the Board will hold a public comment period. Please note that this open forum period for comment is the public's opportunity to address the Board on any topic that is within the purview of the Board. While the Board may or may not take action on the issues presented, the Board will listen to comments, may respond to questions, may ask that questions, or comments be submitted in writing, and may ask that the issue be placed on a subsequent agenda for possible discussion by the Board. The Chairman of the Board will determine the amount of time allotted for public comment.”

“Pursuant to Montana Law, the Chairman may decide to hold a meeting or part of a meeting in executive session due to interests of individual privacy, or individual or public safety or security of public facilities, including jails, correctional facilities, private correctional facilities, and prisons, if disclosure of the information may jeopardize the safety of facility personnel, the public, or inmates of a facility.”

In addition to the above people, the following were present:

Ross Canen, Billie Reich, Chris Briscoe, Kari Alstad, Pat Schlauch, Noah Hatton, Connie Winner, Jeff Lee, Terri Young, Laura Harper, Patrick Kruse, Nicole Tierney, Ben Fry, Laurie Mills, and Alex Schreckenstein

Approval of minutes from the last meeting,  
Moved to approve the minutes – Gayle Butler  
Second the motion – Warden Guyer

All approved

Welcome and introductions.

**Legislative and Management Team Updates- Director's Office**

Director – Legislation session has ended. We are still engaged in efforts to develop a long-term strategic plan for the DOC. We are continuing to define goals and head in the right direction for the next 3-5 years. Will continue to define milestones and outcomes. We have fared fairly well this session. Despite the loss of 10 FTE and a 3 million dollar cut. Slight increases for institutions. Happy with gains we did achieve. Our focus is still achieving evidence-based practices and quality control. We will continue working with University of Cincinnati for forward direction of risk needs assessment, working smarter with legislation cuts. Evidence based programming is a key goal now, using a committee to evaluate all evidence-based programming to aid in quality assurance across the state. We have divided staff into teams that conduct audits with a “Correctional Programs Checklist”, so we are in line with what legislature has set. If anyone wants to participate in training or the process, please reach out. Our main intent is to get a better structure to rely on for programming and provide better custodial programming. Will see a lot more of this in future.

Moving on to the next steps, there is a strong need to assess and evaluate all facilities and community-based programming.

The Legislature and the community are demanding better treatment of Locked Housing offenders. DOC has acknowledged that past standards are no longer acceptable today. The first step to change is evaluating where we are with compliance standards. Acknowledge that correctional evolution and growth needs to happen, and we are striving to be closer to the ACA and federal standards for our locked housing population.

Deputy Director Wolken- Our biggest policy bill for DOC HB111 to transfer parole supervision of certain youth to youth court has passed and the transition is going well. SB62 is a bill to revise inmate welfare fund laws to include Pine Hills passed. SB37 to revise laws related to recording of parole board hearings passed. SB36 to provide exceptions to inmate mandatory savings passed the Senate unanimously. These were gains to the DOC but there were some losses. Now need to determine where the 10 FTE position cuts will have to come from. Jails and Regionals received an increase in per diem. Locking housing bill will affect MSP primarily. Pretty restrictive bills that did not pass the last two sessions, the DOC was asked to revisit restrictions. Need to be ready to comply with the bill as it rolls out. Locked housing issue is a challenge for everyone.

Pat Schlauch – He discussed the County Jail hold numbers averaging 200 to 210. He also discussed the regional rates and how they are calculated was adjusted in the last legislative session. He said there was a cap on indirect costs, limits on purchases over \$5000 must be agreed upon by counties and MDOC and any wage rate increases must be agreed upon by both parties. County jail hold rates were increased to \$69.31/day for FY2020 and \$69.63 for FY 2012. CCC also may get a small increase as well, which amounted to the same percentages as the pre-releases and other providers.

#### **Secure Care Updates – Warden Lynn Guyer**

MSP will be closing MSCTC and will be changed it to Unit-F. MSP is beginning locked housing project starting with 4 cells that will be called “Programming Cells”. Offenders will get 2 hours in these cells but will have to earn the out of cell time. Plans are in the works to cut the biggest yard in half so two units may go out without conflicts. Visitation will change in near future using IC Solutions through Century Link. This will extend visiting from Thurs through Sunday. Visitors call in and make appointments or go online to schedule. Plan to start “pilot” in July and kick in fully on August first. Special visitations will try to be accommodated on a case by case basis with factors including distance and visitation frequency. There will be limits set up for how many people can visit an inmate at one time.

I am working with HR for Project Manager position to oversee the new visiting protocol and locked housing changes. Let MSP pilot it for now, but the visiting scheduling could be available to other facilities. IC Solutions will also send out alerts to public if there are issues or cancellations. There will also be somebody in the visiting that can answer phones and help people. Visitors will already be verified and visiting scheduling will shut down as soon as it is full. Visitors will be allowed to park in their own lot, checkpoint will have an approved list and we will also remove the staging area.

Director- How do the other facilities address visiting? Shelby does visits on Sat/Sun from 8am-5pm and houses 591 offenders. Their visiting can hold up to 250 people.

#### **Review of Annual Grievance Report – Billie Reich**

Fiscal year 2018: MSP had a decrease in informal and increase in formal grievances, MWP had a decrease in both, CCC had an increase in both, DCCF had an increase in both, and GFRP saw a decrease in both. Overall for the DOC secure care facilities there were 5,497 informal grievances, 1,715 formals, 336 Warden appeals, and 265 Director appeals (DOC level). Corrections continues to see medical issues grieved a lot across the board but there is not one specific issue to focus on. There have been several staff changes. MSP will be doing the annual conference for training of employees due to all the changes around September or October. Good idea to break down numbers further to see who exactly is answering appeals. Will also include Pine Hills. Billie will put these changes on agendas for the conference.

Pat Smith-acknowledge the good work that the grievance department does.

### **Approval of Security Chief's Property and Canteen Annual Reviews- AW Schroeckenstein**

There have been numerous requests for canteen changes. Mostly hygiene items. Inmates interested in less expensive headphones, most requests came from MWP. AW Godfrey and Pat Smith worked with Canteen and Medical to approve items on list. See attached. Looking at adding powdered milk and have found Breathe Right strips that will work. Black tank tops were approved. Gayle Butler concerned that if black tank top was approved for one facility it had to be approved for all. Needs to be specific on canteen list that BLACK is for MWP and WHITE is MSP/contracted facilities. There was an agreement that it had to be fair between facilities. It was brought to attention that some items need to be gender specific for facilities. These will be listed on the order forms. There were some hobby adjustments made but only packing sizes changes. Stamps have also changed to allow for both males and females. It will be important that if staff is seeing abuse with canteen items that they DOCUMENT so it can be addressed. See attached proposed canteen changes.

Some questions that were brought up:

What are thoughts on dehydrated fruit? Trying to move towards healthier options. What items need to be added to indigent lists? Medical will have to notify who needs denture supplies and over counter medications for indigent kits. The kits can be adjusted on case by case. Would like to have more consistency as to what funds they come out of. Medical or IWF and that it is the same at each facility. All agree to changes and indigent items will be charged to IWF. Motion to approve new list is set and approved. Will keep annual policy reviews per policy and procedure.

### **Roundtable Discussion on Inmate/Facility Issues- Feedback by All**

Warden Tom Green- DCCF

Short staffed but moving forward the best they can. Started up garden program again. Due to union rules you don't need to be post certified to work in certain posts, so we have been trying part-time positions. Some of the part time staff like the control rooms and have decided to come on full time. Job service currently has over 220 positions open in Glendive.

Pat Schlauch-Budget

There were over 100 bills on session regarding budgets, which required a lot of fiscal notes to be done by his staff. HB2-last session restricted MDOC to county jail holds under 250. Been averaging 200-210 jail holds monthly. Regional prisons. Last session rates were frozen, but they took that language out and put restrictions as discussed earlier on calculations of rates.

Remember fiscal year coming to an end so get with your staff and get bills and invoices sent in as soon as possible.

Steve Ray-Pine Hills

Kids are transitioning from parole to probation. Lease on farm is up so trying to get kids back into farming program. Running 40-44 kids and 60 plus adults. We have a few wild horses to work with and now have a horse trainer who comes to work with kids and horses. We also have 4 goats used for therapy. These are all good behavior adjustment tools.

Connie Winner-CSD

Moving towards electronic medical records. Planning on CSD meeting for medical and mental health in September or October. Encourage all facilities to let staff go. Looking at grant that the board of Crime Control is helping with regarding medication assisted treatment. MWP have women that come in pregnant so working case by case with OBGYN and outside physicians for addictions and opioid abuse. DOC is looking into possibly initiating set up in facilities. Still learning about this.

Captain K- We are about fully staffed for the first time in 10 years. Kitchen remodel is done, new locks in segregation unit.

Gail Butler-MCE

We are going to have apprentices for tire alignment program and are expanding our commercial driver license program. We are currently only down 1 teacher. We have added a program at MWP called "Sublimation". Long range building approved our request for a cook chill expansion, and we are working with architects and engineers to

get that started. We currently have 3 staff members in Canteen and are seeking to add another staff member due to all of the increased workload.

Warden Jenny Hansen-MWP is at max capacity. Lots of repeat offenders coming back. Family day this weekend. A car broke down on transport and MSP helped. We are almost fully staffed.

Warden Pat McTighe -We are reviewing with MDOC and trying to get new vocational programs up and running. Currently in the process of an internal audit.

Pat Smith- All facilities are pretty much maxed out capacity wise. Be safe, be careful insure staff are doing good shakedowns and inspections. Keep things moving and work together. It's been tough all over but we need to keep working toward doing good things.

Pat Smith apologized for not doing this first thing in the meeting but stated due to the recent passage of legislation he would like to suggest adding Pine Hills Superintendent Steve Ray as a new voting member to Prison Issues Board. All approved. Welcome Steve.

### **IWF Accounts, Global Fund Updates, Requests and Funding Reviews - Chris Briscoe**

Kari Alstad filling in for Warden McTighe, brought a proposal from Shelby for recreation equipment totaling \$15,526.70. This request includes a treadmill, exercise bikes and industrial exercise commercial equipment. The company will come in and set up as well as train staff for equipment maintenance. 3 bids did go out, David will be point of contact for this proposal. A question came up in regard to the US Marshalls Service inmates and they do contribute to the IWF fund through their phone use. Only state inmates get funds back from canteen sales though, not USMS. Warden Green makes motion to approve this request, Warden Guyer 2nds. Motion passes with all in favor of the request.

Cascade no IWF requests.

MSP is requesting three phone benches through MCE totaling \$3,384.85 to meet ADA requirements for inmates to use while on the phones. Steve Ray makes a motion to approve this request, Warden Green 2<sup>nd</sup>, motion passes with all in favor of the request.

Dawson no requests

MWP no requests

Pine Hills- Would like to have a proposal for industrial commercial recreation equipment to include ellipticals, treadmills, bikes etc. Rough estimate is \$20,000 to be used from the global fund.  
Per Pat Smith: He asked Superintendent Ray to put the proposals on the required forms and send out and get at least 3 bids for the equipment. Send the total package to him by email with all the info and paperwork together. He would then route the request to the members for a vote.

MCE- 4 years ago approved IWF pay for offenders to pay for birth certificates. Amount requested is \$4,856.00. It was previously approved. Requesting to have it approved again since no action was taken and no payment ever made. Steve Ray makes motion to approve the request, Warden Guyer 2<sup>nd</sup> motion, motion passes with all voting in favor of approving.

MCE – Gayle Butler will be sending into Pat Smith an additional request for a new alignment machine for vocational education program to provide for an ASE certified alignment program. It will include the required bids. This will be a huge step for MCE automotive program. Estimate \$20,000. Will be sent out by email for approval.

Next up is the annual IWF budgets for FY 2020 for each facility. The budgets were read by the budget analyst and reviewed by the entire group for each facility.

MSP is asking for \$250,010 for FY20. FY19 budget was basically the same thing. Everything looks ok to Chris. All voted in favor to pass the budget.

MWP is asking for \$67,620 for FY20. FY19 budget was \$68,700. The decrease is standard, no red flags. All voted in favor to pass the budget.

Cascade County is asking for \$66,950 for FY20. FY19 budget was \$62,975. There was slight increase but nothing out of the ordinary. All voted in favor to pass the budget.

DCCF is asking for \$39,125 for FY20. FY 19 budget was \$37,990. They had increase in cable but no major expenditures they can cut. If they run into the negative it was previously voted at PIB meeting that CCC and MSP would kick in funds from their portion of the IWF. They have cut down on expenditures and are still currently managing from their account. MSP and CCC are still willing to help if needed. All voted in favor to pass the budget.

CCC is asking for \$180,850 for FY20. FY19 budget was \$172,950. This is not an unreasonable increase. All voted in favor to pass the budget.

Pine Hills is asking for a \$13,000 budget for FY20. Would like MSP and CCA to contribute \$5,000 each to get their funds up in order to see where they stand. Both parties agree to help to establish budget needs of Pine Hills. All voted in favor to pass the budget. Supplement is ONE time only.

IWF Global fund summary- Please see hand out. We may need to replenish the fund again in the spring, Chris will monitor the funds and let Pat Smith know before the spring meeting. We need to investigate "Treatment" (Medical) to see if Medicaid should be paying for the extra treatment expenditures. This probably needs to be a bigger meeting to see if there are other areas that may need to be reviewed related to this.

Chris, Steve, and Warden Hanson would like to meet to revisit IWF policy changes to ensure the language works for Pine Hills and others and see if anything else needs to be updated. They would also like to review the visiting policy to see if the "immediate family" definition can be updated (MSP agreed to take the take lead).

Dawson County asked if we could check and see when they could get the Lexis Nexis program added to their tablets. Pat Smith agreed to take the issue to the next tablet committee.

### **Public Comment Period**

Laurie Littledog-Concerned because things have not been addressed. Wants to know what happens to these minutes and why are they not uploaded anywhere. Things that were addressed by the public have not been acted on. Example is the ACLU hearing issues. Very disappointed that Amy Barton told press that it was fixed 9 days before the problem was actually addressed. Feels that records and evidence were not provided, reports were allegedly exaggerated. What happens when public brings concerns, and nothing happens.

Inmates in MDIU or Locked housing can't participate in sweats or other religious practices due to lock down. Native religious programming should be more accessible in these areas. Sweet Pine is not offered as a botanical and that is a widely used botanical.

There are lots of issues on how grievances and kites are handled. Grievances get sent back to offenders because they have more than one complaint written on them and one of the issues was against an officer. They get stuff returned to them because policy is so strict that we lose humanity and inmates suffer.

Mental health kites go out 10 or 11 times before they get answered. Tablets are hard because Natives are different. There needs to be special training for all staff to relate better to Natives.

Discipline hearings are very one sided. Inmates that try to explain are looked at as not being accountable. They get punished and that punishment affects inmates and families and that make us question the humanity. Policy is too strict when all they need is to talk to their family and they can't because they are found guilty and the first course is to take that away.

I am glad locked housing issues are being addressed. Their one hour of time out is always disrupted and is an ongoing issue. When inmates are moved for classification issues, they are not allowed to take their paperwork with them. If they are in a legal process they can't maintain any kind of self-advocacy. Main concern is prison takes away sense of humanity. Is rehabilitation put on hold until they get out? Inmates that are ready for treatment should be allowed to get that treatment.

Will locked housing be offering T4C and Anger Management classes? CO's need psych evals after certain amounts of times because write ups are excessive, and visitors are afraid of officers because they are yelled at or kicked out if they mess up or break rule.

I also ask to retrain mailroom techs because mail gets returned, they single people out because they don't like the inmates or their families. Wants issues in mailroom revisited as that is the only way of communication for people who can't visit and lots of stuff is not fair.

PAT SMITH- Five emails were sent in from members of the public regarding visitation. He will forward all emails to the PIB members for review. They had concerns about cold cells, count issues, searches and other issues.

#### **Other Security/Confidential issues if Needed**

The next meeting will be held in Glendive, tentatively mid to late September. The exact time and date will be sent out in August.

The PIB meeting has since been set for September 24<sup>th</sup> at the Dawson County Correctional Facility from 10:00 a.m. until approximately 2:00 p.m.

Meeting adjourned 1:34pm



**DEPARTMENT OF CORRECTIONS  
PRISON ISSUES BOARDS MEETING  
Montana State Prison  
September 25, 2018  
10:00 a.m. to 2:00 p.m.  
Minutes**

Roll Call – Director Michael, Gayle Butler/MCE, Pat Smith/CPB, Warden Tom Green/DCCF, Acting Warden Jim Salmonsens/MSP, Travis Harris/GFRP, Warden Jennie Hansen/MWP, Warden Pat McTighe/CCC

Others via telephone & vision net/skype – none

There is a quorum present.

“In accordance with Montana Code Annotated Section 2-3-103(1), the Board will hold a public comment period. Please note that this open forum period for comment is the public’s opportunity to address the Board on any topic that is within the purview of the Board. While the Board may or may not take action on the issues presented, the Board will listen to comments, may respond to questions, may ask that questions, or comments be submitted in writing, and may ask that the issue be placed on a subsequent agenda for possible discussion by the Board. The Chairman of the Board will determine the amount of time allotted for public comment.”

“Pursuant to Montana Law, the Chairman may decide to hold a meeting or part of a meeting in executive session due to interests of individual privacy, or individual or public safety or security of public facilities, including jails, correctional facilities, private correctional facilities, and prisons, if disclosure of the information may jeopardize the safety of facility personnel, the public, or inmates of a facility.”

In addition to the above people, the following were present: Kurt Aughney, Noah Hatton, DJ Godfrey, Paul Szczepaniak, Cindy McGillis-Hiner, John Daugherty, Colleen Ambrose, Pat Schlauch, Billie Reich, Kari Alstad,, Cecily Simmons, Alicia Tangen/Quality Assurance, Elaine Dahl/Policy Writer, Kathy Ralston/IT DOC, Scott Klajic/DOC MH, Deputy Director Cynthia Wolken.

Approval of minutes from the last meeting,  
Moved to approve the minutes – Warden Green  
Second the motion – Director Michael  
All approved

Welcome and introductions.

**Legislative and Management Team Updates – Director Michael**

There was a meeting at the Riverside Facility to tell staff they are repurposing the facility and moving Lewistown inmates to Riverside. They are still meeting with staff about the coming changes. The DOC has made a decision regarding the Warden at MSP. They have selected a new Warden and he will begin on October 22<sup>nd</sup>. Lynn Guyer will be the new Warden at MSP. He comes to us from Idaho. This will give us an opportunity to evaluate what we do and how we do it. Director Michael then thanked AW Jim Salmonsens for serving as Interim Warden at MSP.

Deputy Director Wolken – Legislative Update - Law and Justice was considering a solitary confinement bill but have decided not to follow through with this at this time. There will be further discussion on this during the next session. There are several bills related to MCE. There is one on Re-Entry Savings. We have asked for some tweaks on this bill. There is also another bill related to MCE regarding license plates. The big elephant will be our budget. We are trying to meet public safety obligations regarding our budget.

**MDOC Budget Updates – Pat Schlauch**

Budget is in second year of biennium. We had to transfer funds from 2019 to pay bills. We are continually looking at things to make us more efficient. Plan is not to have a supplemental this year. Working with the Governor’s budget office. The

baseline budgets have been submitted, but none have been approved at this point. Pat Smith asked if the regional contracts have been caught up. Pat Schlauch said that with the legislation from last session, rates from regionals were froze at the December 2016 rates. Years 2015-2016 had to have the rates re-adjusted and retro payments were sent back to the facilities. 2016-2017 is done. We have to wait for Legislation for future funding. The CJH is what pushed the budget. Since January, the CJH has been sitting between 200-210 inmates waiting for movement. This is within our budget. This will help tremendously with the budget for 2019.

#### **Division Updates –Interim Warden Jim Salmons**

MSP is severely understaffed for correctional officers. The last two classes have added 20 plus to staff. Due to the officer shortage, visiting has been reduced as the security is not available. There are lots of maintenance issues from an aging facility. Right now, the facility is managing this. On a positive note, the contractors finished the new fences and now have new security functions including cameras on the towers. The population today is 1605.

#### **Warden Jennie Hanson - MWP Updates**

MWP is short staffed also. This causes safety and security issues. There is a new DOC Investigator at MWP. They have been stopping contraband coming in through visiting. Working on the Admin Gate. MWP is at 221 – this is at emergency capacity. There are only three more beds at the whole facility.

#### **Review of Inmate Assignment Policy 5.1.1 & Matrix – Warden Hansen & DJ Godfrey**

Warden Hansen gave a brief synopsis of the DOC policy, which was written in 1998 for the men's prison. In the policy, there is an inmate pay scale. This is harder to follow for the smaller facilities. They would like some verbiage taken out of policy, so it could be more appropriate for the other facilities.

DJ Godfrey said they got rid of the sub-categories. All jobs should fall within policy without having to change the policy. You can give out raises within the facility, but you have to stay in budget when giving raises. The only other change to the policy is now inmates can have two paying jobs, but they must be paid out of two different budgets.

On the table for the Inmate Assignment Policy, they got rid of subcategories. The jobs are now listed that can be paid out of IWF budget. There is also hourly pay for some jobs. The jobs should not fall below or above the pay scale. The IWF rep is now in the policy.

OMIS currently has all the job positions to pick from. The jobs must show the past changes to positions to create the job history.

Pat Schlauch asked who will monitor the higher pay inmates to make sure they stay within the budget. DJ Godfrey said locally there will have to be some internal control.

Pat Schlauch asked what the total budget for inmate payroll is. Chris Briscoe said she will have to go back and look this up. Pat Smith said the people/facilities are accountable for their own budgets for this. Elaine Dahl suggested that all changes for inmate pay should have to go through the Prison Issues Board. Kurt Aughney agreed this would give everyone at PIB a chance to view any changes.

Warden Hansen made the motion to move this forward. The motion was seconded by Warden Green. All in favor, no one opposes.

DJ will work on this policy and send it to everyone.

#### **Tablet Steering Committee Issues – Gail Lambert & Billie Reich**

Gayle Butler said the tablets were put into use at MSP. The steering committee reviews content and requests for additional content for education, programs, etc. There are representatives from all the departments. The steering committee also eliminates content. She will send out the form needed for these types of requests when it is ready for approval. Pat is taking care of the contract facilities.

Lexus/Nexus is not quite ready for the tablets. They are also still trying to figure out how to do transcripts and certificates for the inmates when modules are complete. We discovered that the inmates must read all unit rules, not just the specific unit rules before they use. They are also looking at what is mandatory to make sure it's being read and scored.

Microphone earbuds are not necessary as there are microphones already in the tablets. Microphone earbuds are not made for correctional facilities and they are expensive. Pat Smith said the inmates are wanting to use the microphone headphone for the

language courses, as the tablet microphones do not work well. Gayle said if we allow this for the language courses, then we have to allow inmates to purchase them.

Warden Hansen does not have any problems with microphone earbuds at MWP because the facility is smaller. If the inmates want to purchase them with their own money, then she has no problem. Warden Green would like to see the board agree on something regarding the microphone earbuds. AW Salmonsens would like to look at some options and bring this issue back to the spring meeting. Gayle Butler agreed to re-visit this at the spring meeting.

When an inmate gets written up, it's not always a good idea to take away the tablet for all write ups. This is not logical to take the tablet away as a sanction unless the write up has to do with the tablets. Pat Smith said the tattoo sanction removes electronics. This should not be part of the electronics sanction. If the inmate damages, destroys or alters the tablet, then we could take the tablet away.

The tablets have been given to investigations to look at and see if inmates can compromise them and how. Paul Szczepaniak said the inmates have tried in other states to remove the batteries. John Daugherty said at another state, they were doing this, but with how we issue them, this should be different.

John Daugherty said investigations just received these tablets yesterday. There is a survey regarding the tablets availability and how we should handle certificate and transcript requests.

Warden Green said DCCF has the tablets, but they are not functional yet.

Travis Harris said Great Falls is still working on getting a phone contract before they look at the tablets.

Warden Hansen said MWP has the tablets but not all the programming that MSP has.

DJ Godfrey asked if we are going to allow the inmates to have tablets while serving detention. AW Salmonsens said no, but we will have to have access to OSR's because the kites and grievance will eventually be on the tablets. At this point, access to tablets while in detention will be on a case by case basis. The inmate kites have gone down regarding the tablets.

John Daugherty said he spoke to another state regarding the tablets last week. One of the facilities in the state said they only allow use in cells with the doors closed. John is looking at connection issues. At this point, we are only allowing tablet use in common areas.

Warden Hansen said MWP does the same as MSP with the taking the tablets as part of a sanction. If the write up has something to do with the table, then use it as a sanction. All agreed. Colleen Ambrose asked if we let them continue to use the tablets, can we take away movies and games. Gayle Butler said it is a lot of work to change individual content. If you have questions, contact Pat Smith. The committee meets once a month.

### **Medical Issues – Connie Winner**

Cindy Hiner introduced Dr. Scott Klajic. He is a retired army psychologist and has recently moved his family to Helena. Connie has given him his top priorities. The number one is compliance and best practice.

Cindy Hiner said the next thing to take into consideration is the formulary and treatment of the offender population. The physicians have identified issues with canteen items available for the offenders and how they negatively affect their healthcare. Ms. Hiner said she would like to address the committee regarding changes and putting healthy items on the canteen. For example, the diabetic population and trying to control their sugars. She would like to see healthy choices for canteen purchases. Gayle Butler agreed there should be healthier options. AW Salmonsens said this should be part of the inmate's personal responsibility and there is no room in the canteen for additional items.

Cindy Hiner would like the doctors to come and make a presentation to the board with their healthy options. Should be done in January, so if there are any changes, they would be ready for the spring meeting, which is when we make changes to the canteen.

All were in favor of looking at this and hearing them out. Pat said we should look at all the options and still try to keep the inmate populations requests in mind. Cindy Hiner will present this at the next meeting.

### **Roundtable Discussion on Inmate/Facility Issues** **GFRP- name**

notes

#### **DJ Godfrey – Contract Placement Bureau**

DJ Godfrey has been working with the BOPP regarding mental health evaluations. For now, this is on hold. When there is a transport, the property inventories are not being filled out accurately and completely. The form is outdated. Inmates rolling up and doing their own inventory is problematic. DJ Godfrey will contact someone from each facility to work on the property inventory form. MWP has their own form and does not need to be involved in this.

#### **Billie Reich – MSP Classification/Grievance**

The annual Disciplinary/Grievance Conference is coming up in Shelby. All of the facilities will be there. They have also hired Mark Lochrie as the second Grievance Coordinator. The Department also has a new PREA Compliance Manager. Bill Weddington will start in this position on Monday.

#### **Deputy Director Cynthia Wolken**

Deputy Director Wolken will be helping with the new warden at MSP. She thanked AW Salmonsens, and said he did an outstanding job. They will continue to work toward the opening of the MSP satellite facility at Riverside. Maintenance has been helping with this.

#### **Gayle Butler - MCE**

MSP has hired a new teacher, so they are only down five. Two retired and one changed positions to the library. They have checked on getting a book library available for the MP3 players. This is not available yet.

#### **Colleen Ambrose – Legal Services**

There have been several new hires for DOC legal this week. They have been authorized to fill Robert's position. The new hires will be attending NEO at MSP. They have a lot of HRB cases they are handling related to medical at MSP. The other project is Langford vs. Bullock. They are working on the final provisions of the 1994 settlement regarding ADA compliance. They are making sure they are compliant with the settlement agreement. This includes MSCTC. They are working on ADA issues with locked housing. They are also working with the Training Bureau because we have to provide training for all staff at MSP on ADA. The training has a test at the end. The ACLU is looking at the current training for NEO.

#### **Quality Assurance – Kurt Augney**

The final report from Riverside on PREA is done and looks good. MSP is due on October 9<sup>th</sup>. The Pine Hills' audit starts today.

Evidence based programs – the meetings will be sent by email. They are planning the annual license at CCC.

Director Michael asked if everyone is familiar with the process for approving programs. Kurt Augney said all programs must be evidence based. The forms are on the website. Once the forms are filled out, they need to be submitted to the committee. If approved, it goes to the director for approval and signature.

Pat Smith and DJ are working with the wardens to help with the process, but most must wait until MDOC & MSP determine which ones we will use for secure care males.

#### **Clinical Services - Connie Winner**

They are happy to have Dr. Klajic. They are going to focus on evidence-based programming at MSP. They have a good program at MWP. The Medical Services Manager position at MWP has been posted. The Assistant Directors of Nursing at MSP have been helping out.

#### **MSP- Jim Salmonsens**

MSP is short staffed and also dealing with issues of an aging facility.

#### **Information Technology - John Daughtery**

DOC Legal staff have signed off on the contract for Lexus/Nexus. It should be on the tablets on October 1<sup>st</sup> and we can replace the computers and printers in the facilities. He has a list of all the facilities that need to get this done. Potentially early spring before everyone gets done.

#### **Core Civic – Warden Pat McTighe**

They are filling positions at CCC. They have an upcoming audit. HiSet graduations are next week. Staffing and recruitment is going well. They have been to three different job fairs in the last couple weeks.

Cecily Simons – Kurt Aughney and his group showed up at CCC. Corporate was there at the same time. The PREA report came back good. ACA audit was just completed, and it was very good.

#### **Budget – Pat Schlauch**

Every two years we have an audit of our finances. There was an issue last time with the deposits. Pat Schlauch will be talking to the facilities and to the accounting people at each facility.

They have two positions open now. In the interim, they are working to keep things going. They will probably be short for a while. If you have any questions, call Pat Schlauch or Tawnia Everhard.

#### **MWP- Warden Jennie Hansen**

The new classes are full for the 6-8 week program. It is evidence based and addresses risk/need.

MWP had a new LAC that started yesterday. They also have a new Mental Health worker starting next week. They also hired an Investigator and an Associate Warden.

#### **DCCF- Warden Tom Green.**

DCCF hired a new case manager. Her name is Janine Brown and she is going through training. They will try and get her out to visit the other facilities.

The new inmate phone system is having some issues. Century Link will be fixing these.

#### **IWF accounts & global fund updates, funding and new business - Chris Briscoe**

Chris passed out a summary of the global fund. The global fund gets money from each facility. This fund pays for rent, treatment, and a lot of re-entry stuff for the offenders. There were no comments or questions regarding this.

There was an IWF request. MSP wants to buy an ice and water dispenser for the infirmary. The cost is \$4860.60. opened for discussion. Colleen Ambrose asked if it was for Lewistown Infirmary. The request is for the MSP Infirmary. The old one broke and cannot be fixed, it was originally purchased by IWF long ago. It is in the Infirmary for post-op recovery and inmates who are sick and need to be hydrated, as well as for icing injuries. This request is on our delegated authority, so it does not have to be put out for bid. The IWF reps have not signed this. This was an error, and AW Salmonsens will take this to the IWF reps.

The motion was made by Gayle Butler for \$4860.60 for an ice and water dispenser for the MSP Infirmary. The motion was seconded by Warden McTighe. All were in favor – none opposed.

There were no other requests from the other facilities.

#### **Public Comment Period**

Rudy Stock, Lori Little Dog, Ernest James Christenson

Lori Little Dog said there are some things she wants us to be aware of. First, when it comes to DOC commits, she would like them not to be placed at MSP/MDIU. When someone doesn't do well and ends up on the high side at MSP, it is pretty intense. When it comes to Langford and ADA compliance issues, access to medications, and not putting inmates with mental health issues into confinement, she said she hopes someone can come up with a way to reevaluate how we deal with these inmates. She would like to know if there any way to work with previous doctors the inmates have had before prison. She requested some Native American psychology for employees to go to for cohesiveness and understanding. She also encourages the prison to look at our hiring practices and that we should reach out to the areas around the reservations. There are kids coming out of tribal colleges for these jobs. She was also concerned with MDIU and Pre-Hearing confinement and the inmates not having access to religious practice during those times, and this was concerning to her. When religious practice is totally withheld – she would like us to revisit this. Lock down time is very long and could be better spent. She would also like to have us look at visiting and medicine bags.

Ernest James Christenson – Visiting hours on the low side and Saturdays only for children to visit. He only gets to visit his grandson for an hour and a half before he is asked to leave. He would like to visit a little longer. There is a bottleneck at check in for visiting. He used to visit several years ago, and it wasn't like this. It hard in the winter when it's cold and people have to stand outside in the cold to wait to come in. He would also like to increase the amount of money to \$25.00 to bring to visiting because sometimes he runs out of money and the vending prices have increased over the years.

There were no additional members of the public present, but there were additional comments sent in which will be included as attachments.

**Other Security/Confidential issues if needed**

These were discussed under closed session.

The next meeting was tentatively scheduled for Wednesday, January 16, 2019 in Helena at DOC Central Office. It has since been changed to Wednesday January 23 in the Helena MDOC office.

# ***Department of Corrections***

## ***Prison Issues Board***

Montana State Prison  
400 Conley Lake Road  
Deer Lodge, MT  
September 22, 2020  
9:00 a.m. to 11:00 a.m.

### **I. Call to order**

Pat Smith advised the next meeting will be held in January 2021 during the legislative session, place and times will be announced once the legislative schedule is set. He then called to order the regular meeting of the Prison Issues Board of the Department of Corrections at 9:05 a.m. on September 22, 2020 at Montana State Prison.

### **II. Roll call**

The following members of the committee were present: Pat Smith/Chairman, Peter Bludworth/ CCC, Steve Grubb/GFRP, Tom Green/DCCF, Steve Ray/ Pine Hills, Jennie Hansen/ MWP, Jim Salmonsens/MSP, Reginal Michaels/DOC Director, and Cynthia Wolken/DOC Deputy Director.

Quorum is present.

The following persons were also present: Colleen Ambrose, Kurt Aughney, Griffin Burns, Chris Connell, DJ Godfrey, Kiela Harris, Noah Hatton, Kimberly Lamb, Laurie Mills, Kathy Rolston, Pat Schlauch, Alicia Tangen, and Mark Wlazlak.

Members of the public present: Clemente Arciga, Micah Braided Hair, Marcos Bullchild, Josh Butterfly, Brenton Littledog, Laurie Littledog, May Simmons and Dana Tenas.

### **III. Approval of Minutes**

Warden Hansen moved to approve the minutes from last meeting. Acting Warden Salmonsens seconded the motion. Motion passed unanimously.

### **IV. Update from Director Michaels**

- a) Director Michaels discussed COVID-19 affects to the Department of Corrections facilities and thanked staff of the work done to keep COVID-19 out of our facilities.

- b) Director Michaels announced Jim Salmons as the Acting Warden of Montana State Prison after the resignation of Lynn Guyer. The process of selecting a new Warden for Montana State Prison has begun.
- c) Transportation from county jails to DOC facilities has been a focus. Transportation has been slowed to limit the spread of COVID-19 in our DOC facilities. Director Michaels discussed the Cascade County judge's order and its effect to our operations at the Great Falls Regional Prison.

## **V. Review of Locked Housing**

- a) AW Godfrey addressed the committee regarding actions taken to adhere to House Bill 763. Implementation of changes at Montana State Prison began in January 2020. A major action taken was changing one of our locked housing units into a Secure Adjustment Unit and increased the amount of time offenders are out of their cells. Other modifications include a risk reduction model implemented, adjustments to our level system in the Restrictive Housing unit, increased group activities/programming in the locked housing units and additional staff training in first-aid mental health, de-escalation and cognitive based programming. MSP has been able to reduce the length of stay and the number of offenders in the restrictive housing unit as well as reduced the number of mandatory lockups. Offenders released from the Restrictive Housing Unit directly to the community has also been reduced.

## **VI. Review of Property and Canteen List Inventories**

- a) AW Godfrey reviewed Inmate Canteen Requests with Committee. All members approved the Food Requests reviewed. All members approved the Non-Food Requests reviewed. AW Godfrey discussed the security concern of hygiene products offered on canteen not in clear bottles. A popular brand of shampoo/conditioner is only available in a purple bottle. AW Godfrey will continue to research what brands are available in the clear bottle. All members approved the Hobby Requests reviewed. Warden Hansen recommended limits to length of hobby items should be specific to each hobby item. AW Godfrey agreed and will impose limits on leather and horsehair only. Warden Hansen inquired about the makeup change request. AW Godfrey will submit the makeup list changes to committee for email approvals.



## **VII. IWF Annual Budget**

- a) Kiela Harris, Budget Analyst for DOC, reviewed IWF FY20 Expenditure Summary. IWF FY21 budget was created the same as FY20 until we met and decided how to move forward. For FY21, the budget was \$200,000 less due to the additional spending authority requested at the end of FY20. Current cash balance as of this morning is \$1,042,712. Pat Smith asked if the \$200,000 additional authority carries over to the following year. Kiela Harris confirmed it does go away at the end of the fiscal year and needs to be re-requested. Committee discussed options on how to move forward with approval of the IWF FY21 budget. Acting Warden Salmonsens recommended the MSP budget be reduced by \$68,109 at this time for committee approval, then contingent on approval of additional authority, \$68,109 will go back into the MSP budget and the rest will go into the Global Fund. Committee approved IWF FY21 budget unanimously.
- b) Cindy Hiner requested the purchase of a greenhouse at Riverside Special Needs Unit with IWF funds. Approximate cost for 12x16 greenhouse is \$2999. Superintendent Steve Ray moved to approve with contingency of getting spending authority approved, Acting Warden Jim Salmonsens seconded. Motion approved by committee.

## **VIII. Roundtable**

- a) Montana Women's Prison – Warden Hansen discussed inability to do Family Day as usual but are having their first annual MWP Got Talent show at the end of the month with 15 inmates performing. Performances will be recorded and sent home to families.
- b) Pine Hills – Pine Hills has their farm up and going. Residents were out haying this summer. Handful of residents and staff tested positive for COVID. Very few positive cases are symptomatic, especially residents.
- c) CCC – Warden Bludworth discussed upcoming conference call to move forward with the tablets and the video visitation at CCC.
- d) GFRP – State Unit Manager Grubb discussed COVID issues at GFRP. Inmates are tested weekly. Limiting all movement in facility to slow the spread of COVID-19 virus.
- e) DCCF – Warden Green not available to comment.
- f) MSP – Acting Warden Salmonsens reported zero cases of COVID-19 with MSP inmates. Movement between units has been limited throughout the

pandemic to limit spread of virus. MSP is continuing COVID-19 Sentinel testing for inmates and staff. MSP has recently launched email on the offender tablets and has been very popular among offender population.

- g) Kurt Aughney– Discussed proposed policy change of indigent status from \$15 to \$18. Indigent policy has not been updated since 2017. Adjusting the indigent status to \$18 would open qualification of “indigent status” to more offenders. Griffin Burns will submit the draft of the proposed change to the committee for review.

## **IX. Public Comment**

- a) Laurie Littledog – Discussed concerns with COVID at Montana State Prison, High Side windows, parole plans, and offender census reporting.
- b) Josh Butterfly with Project Opening Doors – Discussed concerns regarding religious activities, the hygiene policy regarding hair cutting, and transparency of IWF funds.
- c) Micah Braided Hair – Discussed religious materials for Native Americans, email availability throughout all facilities, and census concerns.
- d) Clemente Arciga of Welcome Back – Discussed tablets/emails availability for all DOC offenders, indigent status, and mail restrictions due to contraband.
- e) Marcos Bullchild with Project Opening Doors – Discussed concern with Native American religious activities at correctional facilities.
- f) May Simmons – Discussed canteen and hobby issues, community work, medication availability at correctional facilities, MWP recreational facilities, blocked phone calls and facial coverings.
- g) Dana Tenas with Project Opening Doors – Discussed COVID-19 issues in correctional facilities.
- h) Benton Littledog – Requested to let offenders out who have been granted parole and to wear face coverings.

## **X. Adjournment**

Pat Smith advised the next meeting will be held in January 2021 during the legislative session, place and times will be announced once the legislative schedule is set. He then adjourned the meeting at 11:00 a.m.

Bill: HB-2: General Appropriations Act 2021-02-02 08:00 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](mailto:Letthemcomehome@gmail.com)

Phone: (406) 308-3378

City, State: Helena, MT

Written Statement: Attention budget committee:

The claims that Montana Correctional Enterprises, Montana State Prison and the Department of Corrections presently employs corrupt and predatory personnel are accurate and verifiable. Please obtain a copy of the internal DOC investigation and cross-reference the names of employees marked for disciplinary action, Recognize who is still employed and who are repeatedly named in grievances and lawsuits against the DOC. Attached for your review is the front page of the Silver State Post (Deer Lodge, newspaper article) from October 31, 2007. Additional news coverage of this 2007 scandal was in the Billings Gazette, Associated Press and Prison Legal News.

We have reason to believe that some of the DOC's budgetary requests (ie: Clinical Services request for 2,559,048 in Hep C medication) won't actually be applied towards what the department claims, without ACTUAL oversight. We question the ambiguity involved on the backend of some of their requests. For instance, the Clinical Services request. We agree that there are indeed a high number of incarcerated persons who do desperately NEED Hep C medication and treatment. DOC has seen the deadly consequences of inmates "going without". However, we foresee that the DOC may claim that "HIPPA privacy" prohibits them from an audit that would make sure that the allocated funding did in tangible "fact" go towards medication for Hep C, and that the medicine was actually dispensed to the infected inmates. This is a much needed medication for incarcerated people in Montana. We have been monitoring that Clinical Services often communicating to HCV+ inmates that their Hep C cured itself or that their lab numbers are not of concern. So why all of a sudden is Clinical Services finally willing to ask for money to give a pharmaceutical company? The inmates do need the medication. We would like to budget committee to allow this medication to be fully funded with a contingency clause that the individual inmates-in-need are actually dispensed this medically necessary medication.

We strongly support the DOC hiring 5 FTEs for mental health services and medical but just want to emphasize that these professionals need to be actual board-certified medical physicians and board-certified psychologists and psychiatrists. Presently we have employees throughout the prison called "med-techs" who are screening inmate medical requests "kites" who have never gone to med school. This practice needs to be stop and be handed to a professional who has actually completed medical school. MSP presently has a Mental Health Services Manager who has never gone to medical school. This position needs to be re-staffed by an actual medical professional. All Medical and Mental Health staff MUST consist of board-certified providers in good standing with the American Medical Association. Deeming any non-medical "experience equivalency" of prison personnel qualified to screen medical access is a liability to the State. These prison staff members are not qualified to make these decisions and overwhelmingly deem that an inmate is merely feigning for attention, denying the request for medically necessary mental health and medical care. The National Commission on Correctional Health Care (NCCHC) "accreditation" that the DOC subscribes to & the DOC written policies allow for this to take place. Attached is a supporting document that explains how NCCHC "accreditation supplies little more than a thin veneer of respectability that glosses over constitutional violations and other abuses". See attached pdf Prison Legal News article for Nationwide overview of NCCHC controversy.

We have additional concerns about the DOC's Budget requests and ask that all requested appropriations be subject to high scrutiny, audit and be justified under two categories: to bring oversight and transparency to DOC operations & to make rehabilitation immediately accessible to prisoners.

To the members of this committee, we thank for your attentiveness in overseeing the Section D budget.

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# ✿ (</subscribe/digital/>) Betraying the Promise of Accreditation: Quis Custodiet Ipsos Custodes?

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Widespread disdain for people held in prisons and jails, public apathy for humane conditions in detention facilities, tough-on-crime political rhetoric and the privatization of correctional services by for-profit companies have taken a collective toll on the quality of our nation's criminal justice system. Outwardly, organizations like the American Correctional Association (ACA) and National Commission on Correctional Health Care (NCCHC) champion high standards for conditions of confinement and medical treatment for prisoners, respectively, and provide accreditation to facilities that meet those standards. Often, however, accreditation supplies little more than a thin veneer of respectability that glosses over constitutional violations and other abuses.

Read the ACA's promotional materials and you will be convinced it is committed to policies and practices vital to ensuring the safe and humane operation of prisons, jails and other detention facilities. Yet study how the ACA actually operates and you'll quickly see that in terms of purpose and effectiveness the entire accreditation process is a sham; the ACA lacks the power to affect, impose or enforce meaningful change in our nation's corrections system. Both the ACA and NCCHC are also plagued by conflicts of interest, including the fact that they effectively sell accreditation to their correctional colleagues and promulgate their own voluntary standards with no oversight.

The ACA, self-described as the oldest and largest correctional association in the world, was founded in 1870. During its lengthy existence it has failed to make any meaningful inroads to assure the constitutional treatment of prisoners in the United States; rather, such efforts have mostly been achieved through hard-fought civil rights litigation opposed by corrections officials. In 2013, a federal court noted that ACA standards "... do not set the constitutional minimum for prison conditions." See: *Lemire v. Cal. Dep't of Corr & Rehab.*, 726 F.3d 1062 (9th Cir. 2013). And in a 2014 ruling, the Ninth Circuit stated it was "unable to determine ... the significance of the 'accreditation' by the ACA" in a case involving a prisoner's Eighth Amendment claim. See: *Grenning v. Miller-Stout*, 739 F.3d 1235 (9th Cir. 2014). [PLN, Oct. 2014, p.18].

If the ACA and NCCHC, both non-profit organizations, are the self-appointed guardians watching over conditions in prisons and jails and establishing correctional standards, that begs the question: Who is watching over them?

## **A Long History of Criticism**

In August 1982, David L. Bazelon, Senior Circuit Judge for the U.S. Court of Appeals for the District of Columbia, resigned his position as an ACA board member. “The Commission has ... broken faith with the public and has betrayed the promise of accreditation,” he stated.

Bazelon’s resignation came after serving only two years of his five-year appointment. When he first joined the ACA’s board he believed he was embarking on a noble venture, and would be part of setting standards to eliminate constitutional violations in our nation’s prison system. He embraced the idea of bringing public participation into the accreditation process. But the jurist soon realized that the ACA had no intention of living up to the same high standards it espouses for the facilities it accredits.

According to Judge Bazelon, who died in 1993, “the real promise of accreditation is that the conspiracy of silence between corrections officials and the public can be replaced with a partnership for reform.” Instead, he found, “the public is systematically excluded from every stage of the Commission’s work.” He called the ACA a “propaganda vehicle for corrections authorities.”

In a lengthy article entitled “The Accreditation,” published in *Corrections Magazine*, the ACA’s own periodical, Bazelon accused the organization of multiple unethical practices. The ACA, he wrote, “has repeatedly refused to open the accreditation process to public scrutiny and participation; the commission’s audit techniques and deliberative procedures are inherently unreliable; the commission is unwilling to accommodate constructive criticism and the possibility of meaningful change; the commission’s priorities are fundamentally flawed; [and] the commission has pervasive conflicts of interest with the facilities it is charged with monitoring.” [See: PLN, April 1995, p.1].

Judge Bazelon’s rebuke affirmed the widely-recognized fact that the ACA conducts “paper audits” of the facilities it accredits. That is, it examines what policies a prison or jail has in place rather than their actual practices. Meeting the ACA’s accreditation standards is thus more a matter of ensuring a facility has proper paperwork than ensuring it has constitutional conditions.

“If a prison has a policy on paper that says officers cannot beat inmates with rubber truncheons, it can be accredited by the ACA even if officers at that facility are in fact beating inmates with truncheons on a regular basis,” said Ken Kopczynski, director of the Florida-based Private Corrections Institute.

Or as stated in a September 2003 report prepared for the National Institute of Justice by Abt Associates, a private research and consulting group: “Achieving ACA accreditation is not an outcomes-based performance goal. Rather, ACA standards primarily prescribe procedures. The great majority of ACA standards are written in this form: ‘The facility shall have written policies and procedures on....’ The standards emphasize the important benefits of procedural regularity and effective administrative control that flow from written procedures, and careful documentation of

practices and events. But, for the most part, the standards prescribe neither the goals that ought to be achieved nor the indicators that would let officials know if they are making progress toward those goals over time.”

The ACA’s executive and accreditation staff are primarily composed of current and former corrections officials, who accredit facilities run by other corrections officials – an inherent conflict of interest.

There is very little transparency or public accountability; as private organizations, the ACA and NCCHC are not required to disclose their internal records to the public. They can withhold accreditation audit results and exclude members of the public from organizational meetings.

Further, the ACA basically sells its accreditation to prisons, jails and other detention facilities willing to pay the required fees, which range from \$8,100 to \$19,500 depending on the number of days and auditors involved, according to a 2014 rate sheet. To add insult to injury, accreditation fees are paid with public funds; i.e., taxpayer money.

“How can the commission in good conscience represent itself as ‘independent’ and ‘unbiased’ while being financially dependent on the objects of its scrutiny?” Judge Bazelon asked, rhetorically.

His criticisms have proven prophetic: Decades later, little has changed. Consider, for example, a September 2015 meeting between the Tennessee State Employees Association (TSEA), the union that represents state employees – including prison workers – and the ACA. Re-accreditation of the state’s prisons and a “technical review” of issues involving violent incident reporting and staffing were the topics of discussion.

During the 45-minute meeting, ACA officials told union members that state prisons undergo re-accreditation audits every three years, and during the years when audits are not performed, the prisons “conduct annual self-reporting.”

TSEA officials asked the ACA representatives whether a \$40,000 payment made by the Tennessee Department of Correction (TDOC) to the Correctional Accreditation Managers Association (CAMA) might affect their objectivity. The ACA members acknowledged that CAMA was an affiliate of the ACA, but claimed there was “no formal relationship” between the two groups.

Tennessee is one of only a few states in which the entire prison system is accredited by the ACA, and as a result the TDOC holds the American Correctional Association’s Golden Eagle Award. That honor is somewhat tarnished by the fact that for two of every three years that state prisons are accredited, they self-report data to maintain their accreditation; that the TDOC makes large payments to an ACA affiliate; and that despite the TDOC being fully accredited, when conducting its technical review the ACA found Tennessee prison officials were not correctly reporting violent incidents – something that presumably should have been discovered during the regular accreditation process but was not.

The ACA reportedly charged almost \$8,000 to conduct the technical review of the TDOC, which state Rep. Mike Stewart criticized as “a rubber stamp for business as usual.” ACA executive director James A. Gondles, Jr., who participated in the technical review, was quoted as saying, “Our job is not to tear them apart; it’s to help them.”

The Flawed Accreditation Process

Judge Bazelon's harsh critiques of the ACA have stood the test of time and are supported by overwhelming evidence; in spite of its lengthy existence, the ACA has had little if any positive impact on conditions in this country's prisons and jails.

To achieve accreditation a facility has to comply with 100% of applicable mandatory standards and at least 90% of applicable non-mandatory standards. Under some circumstances the ACA may waive certain non-mandatory standards. There are different standards for different types of facilities, such as adult correctional facilities, jails, juvenile detention centers and boot camp programs. If a facility fails an accreditation audit it can reapply – if it pays another fee.

Sometimes, prisons and jails achieve ACA accreditation even when they have egregious conditions of confinement, high levels of violence, poor medical care and operational problems, as indicated by the examples cited below.

The ACA accredited the Southern Ohio Correctional Facility in Lucasville in 1990. Three years later a major uprising, brought about by deplorable conditions at the prison, resulted in the deaths of nine prisoners and one guard. Forty other people were seriously injured during the 11-day rebellion. [See: PLN, July 1997, p.19; Jan. 1995, pp.13,14]. The ACA had received reports prior to the riot that the facility was blatantly disregarding accreditation standards. But instead of investigating, ACA officials reportedly instructed whistleblowers not to interfere. Several years later the ACA appointed the director of Ohio's prison system to serve as its president.

In 1992, the ACLU's National Prison Project Journal published a detailed article about the brutal beating of Louisiana prisoner Keith Hudson while he was handcuffed and shackled. In his pro se lawsuit, Hudson alleged that he had suffered a cracked dental plate, loosened teeth and a split upper lip. Rather than intervening, a prison lieutenant told the guards who imposed the beating not to "have too much fun."

Hudson received no relief from the state courts or the Fifth Circuit Court of Appeals, but the U.S. Supreme Court granted his petition for certiorari review. A number of organizations filed amicus briefs in support of Hudson's claims – many of which were clear-cut violations of ACA standards. But when asked whether they would join in an amicus brief, the Executive Committee of the ACA declined – twice – because they felt it was not "in the best interest" of the organization.

Then-ACLU National Prison Project director Al Bronstein sharply rebuked ACA officials. "[O]nce again, the ACA leadership has demonstrated that ACA standards are not professional correctional standards," he wrote. "Rather, they are a collection of words and phrases relied on by various ACA officials when it serves their interests (e.g. as a defense to a conditions lawsuit; as a means of getting funds from the legislature). The ACA Executive Committee action – non-action might be a better description – makes a sham of the whole standards and accreditation process."

The Supreme Court held in Hudson's appeal that the use of excessive force against a prisoner can constitute a violation of the Eighth Amendment even when serious injury does not result – a decision in which the ACA's voice was conspicuously absent. See: *Hudson v. McMillian*, 503 U.S. 1 (1992).



In 2003, South Carolina decided to forgo ACA accreditation and implement its own “tougher” in-house prison inspections. By eliminating the ACA’s accreditation fees, the state saved \$140,000. Then-DOC Director Jon Ozmint said the money would be better spent on prison maintenance. Whether the funds were used to improve the prisons or not, it is clear that as far as South Carolina was concerned, the loss of ACA accreditation was no real loss at all.

More recently, Kathy Black-Dennis, the ACA’s Director of Standards, Accreditation and Professional Development, was deposed in 2013 in a California class-action prison overcrowding case. See: *Plata v. Brown*, U.S.D.C. (N.D. Cal.), Case No. CO1-1351-TEH [PLN, July 2011, p.1]. Under oath, she was asked to testify about a report she had co-authored. According to that report, “the standards promulgated by the ACA are used by lawyers, judges, county administrators, academia, and advocacy groups throughout the country as a tool to ensure the basic constitutional rights of the offender, while serving to protect staff and the public at large.”

When asked for specifics by Don Specter with the Prison Law Office, however, Black-Dennis was unable to name a single attorney or provide a single case citation that relied upon ACA standards to ensure the constitutional rights of prisoners were upheld.

The report that Black-Dennis co-authored had anticipated the successful accreditation of at least two California prisons, even though those facilities were in the midst of class-action lawsuits for inadequate medical care and overcrowded conditions. When asked whether ACA audits should contain information about legal actions against a prison for “conditions-related issues,” she stated, “Not necessarily, no.”

Additionally, as part of the accreditation process, ACA auditors often interview prisoners. When asked whether the auditors are supposed to include complaints made by prisoners in their report, she responded, “Not specifically, no.”

She also acknowledged that ACA standards related to the ratio of toilets and showers for prisoners, the amount of cell space per prisoner, the frequency for cell checks in segregation and the amount of exercise that prisoners receive are not mandatory standards – meaning they can be waived during the accreditation process.

Finally, Black-Dennis was asked point-blank, “So then it seems possible that a facility can be accredited by your organization yet be found unconstitutional by a court, right?” Her response was “Yes.”

That wasn’t surprising, as courts have long held that accreditation standards do not determine the minimum constitutional rights applicable to prisoners. The Fifth Circuit stated in *Gates v. Cook*, 376 F.3d 323 (5th Cir. 2004) that it was “absurd to suggest that the federal courts should subvert their judgment as to alleged Eighth Amendment violations to the ACA whenever it has relevant standards.... While compliance with ACA’s standards may be a relevant consideration, it is not per se evidence of constitutionality.”

The U.S. Supreme Court addressed accreditation standards in *Bell v. Wolfish*, 441 U.S. 520, 543 n.27 (1979), finding that accreditation by organizations like the ACA does not determine constitutionality. The Court wrote: “[W]hile the recommendations of these various groups may be instructive in

certain cases, they simply do not establish the constitutional minima; rather, they establish goals recommended by the organization in question.”

Accreditation is voluntary, as is compliance with the ACA’s self-promulgated standards; at least in theory, the obligation of corrections officials to respect prisoners’ constitutional rights is not voluntary. The only sanction the ACA has at its disposal for noncompliance is revoking accreditation – a rare occurrence that has no practical effect and simply returns a prison or jail to the status it had before being accredited.

Basically, as Judge Bazelon observed almost 35 years ago, the primary requirement for ACA accreditation is the facility’s ability and willingness to pay the accreditation fee.

The U.S. Department of Justice’s (DOJ) Civil Rights Division issued a letter in April 2008 that found the Worcester County Jail and House of Correction in Massachusetts had unconstitutional conditions of confinement. Specifically, the jail failed to protect detainees from harm, failed to protect them “from exposure to unsanitary and unsafe environmental conditions,” and did not provide detainees with adequate mental health care. County officials rejected the allegations, noting the facility was accredited by both the ACA and NCCHC – which, in light of the DOJ’s findings, indicates the inadequacy of accreditation. [See: PLN, Nov. 2008, p.24].

### **Accreditation and Private Prisons**

The nation’s largest private prison company, Corrections Corporation of America (CCA), pays tens of thousands of dollars each year to accredit its for-profit facilities and regularly sponsors the ACA’s biannual conferences – including one being held in Boston in August 2016.

Additionally, CCA warden Cherry Lindamood is currently a member of the ACA’s Standards Committee; CCA executive vice president Harley Lappin previously chaired the Standards Committee while CCA regional director Kevin Myers served on the same Committee; and a former CCA program manager, Daron Hall, was the ACA’s president from 2011 to 2013. It’s no wonder that CCA has a very close relationship with the ACA, with most of its detention facilities (excluding community corrections centers) being accredited despite well-publicized scandals at the company’s prisons.

In 2009, five employees at CCA’s Otter Creek Correctional Center in Kentucky, including the chaplain, were charged with raping or sexually assaulting prisoners. [See: PLN, Sept. 2011, p.16; Oct. 2009, p.40]. While both Kentucky and Hawaii withdrew their female prisoners from Otter Creek, the ACA continued to accredit the facility until it closed in June 2012. Apparently, systemic sexual abuse did not constitute a serious enough violation to warrant revocation of the prison’s accreditation.

After Ohio sold the Lake Erie Correctional Institution to CCA in 2011 for \$72.7 million, a September 2012 audit by the state’s Correctional Institution Inspection Committee (CIIC) found deficiencies that included non-compliance with dozens of security and safety standards – ranging from poor food quality and sanitation to inadequate medical staffing, emergency unpreparedness and unsafe storage of hazardous materials. There were reports of prisoners having to defecate in plastic bags and urinate in cups due to problems with the toilets, and prisoners being triple-bunked in segregation cells. [See: PLN, Nov. 2014, p.44].

The CIIC conducted a surprise inspection in January 2013 that found improvements but also cited high levels of violence. “Staff interviews, inmate focus groups, the inmate survey, and institutional data all indicate that personal safety is at risk at [Lake Erie],” state inspectors wrote. “Assaults, fights, disturbances, and uses of force have all increased in comparison to prior years. There is a high presence of gang activity and illegal substance use. Inmates reported frequent extortion and theft.” In spite of the deficiencies cited by the CIIC, that same month, in January 2013, the ACA accredited Lake Erie with a score of 99.06%.

The Idaho Correctional Center (ICC), the largest prison in the state with a notorious record of violence, was operated by CCA for over a decade until Idaho officials opted not to renew the company’s \$29 million contract in June 2014. CCA faced multiple lawsuits, including a class-action suit in which it was held in contempt – with the contempt ruling affirmed by the Ninth Circuit in May 2016 – as well as an FBI investigation.

“The courts have once again found that CCA was in the wrong and must be held accountable,” said ACLU-Idaho legal director Richard Eppink following the Ninth Circuit’s decision.

CCA admitted that employees at ICC had fraudulently misreported staffing levels at the prison and falsified records. Due to the understaffing, the facility experienced more violent incidents than all other state prisons combined, according to a 2008 report by an Idaho DOC official, and was known as a “gladiator school.” One ICC prisoner was viciously beaten by another prisoner while CCA staff watched but failed to intervene; video of the incident was released to the public over the company’s objections. Another class-action lawsuit accused CCA guards of collaborating with gang members to maintain control at the facility. [See: PLN, Oct. 2013, p.28; May 2013, p.22; Feb. 2012, p.30].

Yet during the scandal, the CCA-operated prison was accredited by both the ACA and NCCHC.

When the ACA reviews facility records during the accreditation process, it assumes those records are accurate; however, that might not be the case. In December 2008, former CCA employee Donna Como testified at a county commission meeting in Nye County, Nevada that she had previously worked at CCA’s Southern Nevada Women’s Correctional Facility.

“I was the person who doctored the ACA accreditation reports for this company,” she stated, as part of her comments in opposition to the siting of a CCA-run prison in Nye County.

CCA is not the only private prison company to experience problems at accredited facilities. The Walnut Grove Youth Correctional Facility in Mississippi, operated first by Cornell Corrections, which was acquired by the GEO Group, and later by Management & Training Corp. (MTC), was accredited by the ACA even though the U.S. Department of Justice found “systemic, egregious practices” at the prison, including “brazen” sexual misconduct involving juvenile offenders that was “among the worst that we’ve seen in any facility anywhere in the nation.” High levels of violence and understaffing were cited, too.

A class-action lawsuit against Walnut Grove settled in 2012; U.S. District Court Judge Carlton Reeves wrote the facility had “allowed a cesspool of unconstitutional and inhuman acts and conditions to germinate, the sum of which places the offenders at substantial ongoing risk.” [See: PLN, Nov. 2013, p.30].

Yet one year later, while still in the process of complying with the settlement agreement, Walnut Grove scored a 100% on another ACA accreditation audit. Jody Owens, an attorney with the Southern Poverty Law Center, which was involved in the class-action suit challenging the abysmal and dangerous conditions at Walnut Grove, found it hard to believe the facility had achieved a perfect score.

Owens called ACA accreditation “a rubber-stamping process,” noting that many of the problems at the prison were “overlooked when these grades are passed out.” He concluded, “It makes you question the integrity of the process.”

Shortly after Walnut Grove passed its ACA accreditation audit with a 100% score, on December 31, 2013 a major disturbance broke out at the facility involving juvenile offenders in three units. Sixteen had to be treated at a local hospital for “wounds, lacerations and fractures.” Following that incident, seven guards resigned or were terminated – but at least the prison was accredited, indicating it met the ACA’s standards.

In February 2015, prisoners rioted and virtually destroyed a federal Bureau of Prisons (BOP) facility in Texas. Detainees at the Willacy County Correctional Center in Raymondville, 200 miles South of San Antonio, used pipes, mop and broom handles and other makeshift weapons during the uprising over conditions at the facility, including poor medical care.

Willacy was run by MTC, a for-profit prison firm with a long history of operational problems and deficiencies. The abysmal conditions and medical care that led to the riot were several years in the making.

Carl Takei, an ACLU staff attorney, visited the Willacy facility in 2013. He described how at that time prisoners were living in large bug-infested tents and forced to use toilets overflowing with raw sewage.

“Willacy is aptly a symbol of everything that is wrong with the criminalization of immigration and BOP’s use of privatization,” Takei stated. He called the riot “a predictable consequence of the Bureau of Prisons turning a blind eye to the abuse at Criminal Alien Requirement prisons.”

Criminal Alien Requirement (CAR) facilities, all privately operated, house federal prisoners who face deportation after serving their sentences. In June 2014, the ACLU issued a report that found a variety of problems at CAR prisons in Texas, including raw sewage, insect infestations and poor medical treatment at the Willacy County Correctional Center.

After the February 2015 riot brought inhumane conditions at Willacy to the public’s attention, MTC insisted that medical services at the prison were adequate, as they had been accredited by both the ACA and The Joint Commission – a non-profit organization that provides accreditation for health care programs.

Indeed, according to an MTC news release, the ACA gave Willacy “a score of 100 percent on mandatory standards and 99.6 percent on non-mandatory standards.” The warden at the time, Randy Treon, stated, “This recent audit by the ACA reaffirms our commitment of excellence to the community in which we live.” The prison’s pre-riot accreditation, however, was at odds with the poor conditions that reportedly led to the uprising.

As early as 2009, well before the riot, a nurse who worked at Willacy, Kathleen Baldoni, testified at a congressional briefing about conditions at the prison, including “extreme temperatures, inadequate nutrition, medical staffing shortages, and long delays for critically needed health care.” She added, “the level of human suffering was just unbelievable.” Further, a 2011 PBS documentary reported a “dozen allegations of sexual abuse” at Willacy.

Yet the facility was accredited by not one but two private accreditation organizations. MTC’s explanation for this apparent contradiction? The company claimed – based on its own investigation – that the riot had involved a small group of detainees who feared being deported, who allegedly told other prisoners to blame the disturbance on inadequate medical care. That conflicted with a BOP after-action report, which found the riot was “directly attributed to the perception of the inmate population regarding the delay of medical treatment.”

The Willacy facility is no longer accredited by the ACA – but only because it closed due to extensive damage caused by the riot, requiring over 2,800 prisoners to be transferred to other federal prisons.

Two major riots had occurred at another CAR facility, the GEO Group-operated Reeves County Detention Center in Texas. The uprisings, in December 2008 and January 2009, which involved prisoners setting fires and taking hostages, also were related to poor conditions and inadequate medical care. [See: PLN, Feb. 2010, p.22]. The Reeves County facility was accredited by the ACA in 2009.

Requirements to obtain and maintain accreditation by the ACA and/or NCCHC are often included in private prison contracts. For example, according to a June 15, 2016 email from CCA spokesman Steve Owen, “Of all the facilities for which CCA has operational responsibility, there are forty nine (49) that are contractually required to achieve and maintain ACA accreditation. Of those, forty seven (47) facilities, or 96 percent, are ACA accredited.” The other two, he said, are pending initial accreditation audits.

The value that such contractual provisions provide is questionable, though, given the examples cited above and the shortcomings of accreditation in general.

### **NCCHC Accreditation No Better**

On June 4, 2008, Edward Harrison, president of the National Commission on Correctional Health Care, testified before the U.S. House Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law on issues related to the provision of medical care to immigrant detainees.

According to Harrison, “CQI [Continuous Quality Improvement], one of our standards, dictates that facility staff actively seek out areas in need of improvement. The model embraces the discovery of problems as an opportunity to improve.”

In spite of its professed concern for the improvement of medical care, the NCCHC’s standards, like those of the ACA, lack legal or constitutional standing. In *Belcher v. City of Foley*, 30 F.3d 1390 (11th Cir. 1994), the mother of a deceased prisoner sued jail officials for deliberate indifference after her son committed suicide. She used the NCCHC’s “Standards for Health Services in Jails” to support her claim. The court held that “such non-legally enforceable standards are not the law and cannot clearly establish it.”

Similarly, a federal district court in Texas found NCCHC standards unavailing with respect to the constitutional requirements for prison health care. “Rather than analyze the actual quality of the medical care received by inmates, the NCCHC’s evaluation focuses on the written standards, policies, protocols, bureaucracy, and infrastructure that makes up the medical care system,” the court wrote. “Further undermining defendants’ attempt to use NCCHC accreditation as a proxy for a certification of the constitutionality of its medical care is the fact that at least two of the plaintiffs’ experts who testified about profound shortcomings in the quality of care in [Texas prisons] also work as NCCHC accreditors.... While NCCHC accreditation does bolster defendants’ claims that its medical care system is functioning constitutionally, the accreditation simply cannot be dispositive of such a conclusion.” See: *Ruiz v. Johnson*, 37 F.Supp.2d 855, 902, 924-25 (S.D. Tex. 1999), rev’d on other grounds, 243 F.3d 941 (5th Cir. 2001).

Like the ACA, the NCCHC warns prison officials of upcoming inspections but claims they also conduct unannounced reviews. Also like the ACA, the NCCHC has historically relied on self-reported information from the facilities it accredits. In 1996, for example, the NCCHC accredited Utah’s Draper and Gunnison prison hospitals based on a “sampling of medical records.” It concluded that “not a single case of rape or sexual abuse was found.”

According to Ross Anderson, an attorney in Salt Lake City, such pseudo-inspections are insufficient and serve to cover-up sexual assaults and sexual abuse. Public records supported his claim, revealing that about 10 sexual assaults a year are investigated at the Utah prisons. In 1996, Draper and Gunnison reported 15 sexual assault investigations involving prisoners.

Even prison medical officials found the NCCHC’s conclusions hard to believe. “I remember the claim of [no sexual assaults] being an issue – raising eyebrows in my own department,” said clinical service administrator Dale Schiapaanboord. [See: PLN, July 1998, p.14].

In fact, Utah prisoner Ricardo Rodriguez had been convicted that same year of forcible sexual assault and had 1 to 10 years added to his prison sentence for the attack. This information was conveniently withheld from the NCCHC during the self-reporting process.

Robert Jones was the prison medical director at the time of the accreditation; he was also part of the team that assisted in the NCCHC inspection. Jones said the oversight had probably resulted from the failure of prisoners to report the sexual assaults. According to Jones, “most [prisoners] fear the consequences of reporting.” However, his explanation was suspect given that public records contradicted his claims and he worked part-time for the NCCHC.

More recently, NCCHC accreditation failed to prevent the deaths of multiple prisoners at a jail in Tulsa, Oklahoma. Then-Tulsa County Sheriff Stanley Glanz was dismissive of the deaths, calling them “a part of life.” Meredith Baker, general counsel for the sheriff’s office, attempted to be more tactful by pointing out that medical care at the facility was accredited by the NCCHC. At least 17 prisoners died from 2009 to 2014, and six of those deaths resulted in lawsuits.

In 2011, surveillance video showed Tulsa jail prisoner Elliott Earl Williams, 37, lying on the floor in the facility’s medical unit for several hours without medical treatment before he died. [See: PLN, April 2015, p.46]. In another case, doctors refused to send a detainee to the hospital even though he was passing black urine. He later died.

One detainee told jail officials he suffered from paranoid schizophrenia and repeatedly asked for help. Three days later he was found dead after hanging himself in his cell.

The NCCHC noted deficiencies at the jail as early as 2007, including untimely mental health screenings, and placed the facility on probation in 2010. Yet the jail remained accredited and its probation was rescinded less than a year later – the same year three prisoners died. During the 2010 NCCHC audit, a nurse employed at the Tulsa jail, who was not named in news reports, said she was asked to “doctor medical charts by backdating undocumented information.”

The El Paso County jail in Colorado had just come off an NCCHC probationary period when John Sebastian was arrested in August 2012 and placed in a bare medical cell. Sebastian suffered from bipolar disorder and his doctor had recently changed his medication, leading him to become manic and disoriented. His aberrant behavior resulted in his arrest for aggravated robbery. A video obtained by his wife confirmed that Sebastian was restrained and denied food, water, a bed and access to a toilet for 23 hours; the only medical attention he received was when he was wrestled down by guards long enough for a nurse to take his vital signs. He was eventually taken to a hospital suffering from dehydration, covered in bruises and feces.

Even jail medical workers criticized the way the jail’s medical department was run. Denise Bernier was head nurse at the facility from August 2011 to August 2013. “We were not in compliance with [accreditation] standards on a regular basis,” she stated. Sonja Clark, who oversaw mental health in 2012, added, “The place was dysfunctional; I’m surprised no one has died.”

The jail had been on probation with the NCCHC since 2011 and was the target of several lawsuits brought by the ACLU. Sgt. Greg White said that from 2012 to 2013, the sheriff’s department considered terminating its contract with a private medical firm, Correctional Health Care, after an NCCHC audit found their services to be deficient in eleven areas, including infirmary care and mental health screening. The probation was lifted after around 7 months.

Mark Silverstein, legal director for the ACLU of Colorado, noted the jail’s accreditation by the NCCHC did not mean it provided adequate medical care. “Once a jail is accredited, the accreditation agencies are viewed as notoriously lax,” he said. “There are jails that are accredited and are still providing constitutionally inadequate health care.”

At least Sebastian survived, unlike other prisoners denied medical care at NCCHC accredited facilities.

In January 2009, the NCCHC stripped its accreditation from all six jails in Maricopa County, Arizona. The organization had given Sheriff Joe Arpaio almost three years to correct problems identified in a 2005 inspection. Medical care, or the lack thereof, was provided by the county’s Correctional Health Services (CHS). Beyond problems with CHS, NCCHC officials accused Arpaio of “providing false information about compliance” with accreditation standards. Twice, a federal judge ruled that medical care in the county’s jails was unconstitutional. [See: PLN, Dec. 2009, p.16; May 2009, p.28].

Since the sheriff took office in 1993, Maricopa County has paid over \$140 million in settlements, verdicts and legal fees in jail abuse, wrongful death and medical neglect and deliberate indifference lawsuits. Almost 160 prisoners died in custody from 1996 to 2015; almost a quarter were suicides,

and in about half the cases the cause of death was unknown. [See: PLN, April 2016, p.22]. Some of the prisoners died due to grossly deficient medical care.

In one case, following the January 2005 death of prisoner Deborah Braillard, who was denied insulin despite being diabetic, the director of medical services for the sheriff's office, Dr. Todd Wilcox, testified against jail staff and accused them of falsifying Braillard's intake screening form. Wilcox said he quit due to the unwillingness of the county and sheriff's office "to improve training, conditions and access to medical care for inmates and detainees." A lawsuit filed by Braillard's family resulted in a \$3.25 million settlement in 2012.

Inexplicably, that same year the county again regained full NCCHC accreditation. The following year, on October 6, 2013, prisoner Felix Torres, 47, received a shot of a drug called Toradol from jail medical staff. Torres had a history of ulcers, and Toradol is contraindicated for people with that condition. According to a lawsuit filed by Torres' family, the drug caused his ulcer "to develop and perforate." He pleaded for medical care to no avail, and died in extreme pain.

In 2015 the Maricopa County jail system, still accredited by the NCCHC, received that organization's R. Scott Chavez "Facility of the Year Award."

### **Corizon: A Poor Endorsement for NCCHC**

Corizon Health, one of the largest for-profit prison medical providers in the United States, is a perfect example of everything that's wrong with the NCCHC's accreditation process. While Corizon boasts about obtaining NCCHC accreditation at prisons and jails nationwide, B. Jaye Anno, a prison health expert and NCCHC co-founder, explained why that is misleading.

According to Anno, when considering a facility for accreditation the NCCHC only looks at whether a prison has the "infrastructure" to deliver proper health care. They do not evaluate whether or not adequate medical care is actually provided – which is analogous to the ACA's paper audit process. This helps to explain the many examples of questionable prisoner deaths at facilities accredited by the NCCHC.

"It's fair to say they look at minimum standards," Anno stated.

PLN has previously reported on a litany of prisoner deaths in facilities where medical care was provided by Corizon, as well as lawsuits against the company and the non-renewal of contracts by state prison systems and jails due to poor performance. [See: PLN, Dec. 2015, p.22; Oct. 2015, p.20; March 2014, p.1].

In 2012, Dr. Don Bennett, executive director of the Correctional Medical Authority in Florida, stated, "In my opinion, NCCHC and ACA are not sufficient to measure true quality of prison health care. They are very good at ensuring that systems are operating, but if you are checking for quality, more resources would have to be provided."

As a case in point, the Santa Rita jail in Alameda County, California has been accredited by the NCCHC for at least seven years. In 2015, the county and its medical provider, Corizon, settled a wrongful death lawsuit filed by the family of 50-year-old prisoner Martin Harrison, Sr. for \$8.3 million. Upon being stopped for jaywalking in August 2010, police discovered Harrison had an



outstanding warrant for failure to appear in court on a DUI charge. Despite suffering from severe alcohol withdrawal, Corizon staff cleared him for placement in general population. He began hallucinating and acting erratically, and was beaten and tased to death by ten deputies.

At the time of Harrison's death, Corizon employed licensed vocational nurses to conduct jail intake screenings instead of more qualified (and expensive) registered nurses.

"Which, by state law, they're not qualified to do that kind of work for the inmates," said Michael Haddad, one of the attorneys representing Harrison's family, referring to licensed vocational nurses. "So the inmates were getting unqualified people screening them and checking out their medical problems."

As part of the settlement, Corizon agreed to change that practice in Alameda County and other jails in California where the company provides medical care. [See: PLN, March 2015, p.54]. While the litigation was pending, Dr. Harold W. Orr, Jr., employed by Corizon, testified about NCCHC accreditation.

When asked to address the effectiveness of being accredited by the NCCHC, he replied, "Well, let me say it like this. What I think I was trying to tell you is that you could not be NCCHC-certified and still provide excellent care to your inmates. Accreditation is a process when they come in and audit you, but you may never choose to be audited and provide excellent care to inmates."

He was then asked, "And the reverse is true as well, isn't it, Dr. Orr. That somebody can be NCCHC certified, accredited, and provide bad care?"

"I suspect that could probably happen," he responded.

In fact it does happen. In February 2014, the NCCHC re-accredited the Harris County Jail, the "largest mental health in-patient treatment center in Texas," praising the facility for its high standard of care.

"I salute our entire medical staff for setting a national example for inmate health care as well as meeting all national standards," Sheriff Adrian Garcia said at the time.

However, according to a 2015 investigation by the Houston Chronicle, there have been 75 prisoner deaths at the jail from 2009 to 2015. In 19 of those cases, the cause of death was either a treatable or preventable condition, but medical staff failed to provide adequate care. [See: PLN, July 2015, p.44; Jan. 2010, p.14; Sept. 2007, p.9].

"How the third-largest jail in the United States gets away with violating inmates' constitutional right to adequate health care is beyond belief," said attorney Randall Kallinen on behalf of the family of Patrick Green, who died from bacterial meningitis while held at the Harris County Jail in March 2015.

During his tenure as a court-appointed monitor of the Pierce County Jail in Tacoma, Washington, Dr. Joseph Goldenson said NCCHC standards "...represent a 'well thought out and systematic approach to the difficulties of providing a quality system of health in corrections [and] as a method of organizing the reports.'" But he added that NCCHC accreditation fell short of providing any enforceable constitutional standard of medical care.

The Pierce County Jail had been under federal oversight since 1996 due to a class-action lawsuit. Originally, the facility had “expressed a desire to use the National Commission on Correctional Health Care (NCCHC) standards as their guidelines and final goalpost for their health care system,” said Goldenson. But a decade later, between 2006 and 2008, at least eight deaths were the direct result of deficient medical care at the jail, and Goldenson found 18 areas in which the facility was out of compliance with NCCHC standards. The county then argued that the standards were only guidelines, not requirements. [See: PLN, Sept. 2010, p.38].

And in February 2016, the family of Chatham County, Georgia jail detainee Matthew Clinton Loflin, 32, filed a wrongful death suit in federal court. Their complaint alleges that Corizon Health staff failed to provide treatment for Loflin’s symptoms of congestive heart failure, including shortness of breath, pain and passing out, and refused to send him to a hospital until an outside cardiologist ordered that he be taken to an emergency room.

“Matthew Loflin died because defendants were deliberately indifferent to his serious medical need,” the lawsuit stated. “Corizon, by and through its agents, chose to protect its own profits rather than preserve Mr. Loflin’s life.”

At the time of Loflin’s death in April 2014, the Chatham County jail was accredited by the NCCHC. Three months later, Corizon’s medical program at the facility was also accredited by the Medical Association of Georgia. The wrongful death suit filed by Loflin’s family remains pending. See: *Maley v. Corizon Health*, U.S.D.C. (S.D. Ga.), Case No. 4:16-cv-00060-WTM-GRS.

### **Conclusion: Corruption and Cash**

One prisoners’ rights group, Citizens United for Rehabilitation of Errants (CURE), has sent a representative to ACA meetings for years, to propose standards and provide input. CURE’s representative, Dianne Tramutola-Lawson, has attended the ACA’s Standards and Accreditation Committee meetings and is a member of the organization’s Delegate Assembly. In an interview with Prison Legal News, she explained it was important to have a seat at the table, and that to her knowledge CURE was the only prisoners’ rights group that attends ACA meetings. CURE has advocated for ACA standards for lower prison phone rates and temperature control in prisoners’ living areas (such as air conditioning during hot weather), and opposes video visitation that results in an end to in-person visits.

A seat at the table to seek accountability is certainly a noble goal, but likely a frustrating and fruitless one given the many shortcomings of the ACA’s accreditation process – as well as outright corruption.

In the latter regard, ACA president Christopher B. Epps resigned in November 2014, just before he was indicted by federal prosecutors on 40 counts of bribery, money laundering, conspiracy and tax-related charges. At the same time he also served as commissioner of the Mississippi Department of Corrections and president of the Association of State Correctional Administrators (ASCA). In 2011 he received the ASCA’s award for Outstanding Corrections Commissioner in the Nation.

Epps is accused of accepting over \$1.4 million from Cecil B. McCrory, a former Mississippi state lawmaker and corrections consultant used by private prison firms GEO Group and MTC, and from Sam Waggoner, a consultant for prison phone provider Global Tel\*Link (none of the companies has

been charged). In exchange, according to prosecutors, he steered hundreds of millions of dollars in DOC contracts to the companies associated with McCrory and Waggoner.

Initially released on \$25,000 bond, Epps pleaded guilty in February 2015 to charges of filing a false tax return and conspiracy to launder money. He forfeited two houses and two Mercedes, and federal investigators seized nearly \$70,000 in cash from a safe at his home. McCrory and Waggoner also pleaded guilty, and in February 2016 another consultant, Robert Simmons, was indicted for bribing Epps. Thus far none of the defendants in the bribery scandal have been sentenced; in April 2016, McCrory told the federal court he wanted to withdraw his guilty plea. Prosecutors have indicated that more indictments are possible.

Meanwhile, the ACA replaced Epps with Mary L. Livers, deputy secretary of the Louisiana Office of Juvenile Justice, who now serves as the organization's president.

Most prisoners at facilities that have undergone ACA audits are aware of the frenzied efforts by corrections officials to clean up, slap on a fresh coat of paint and get unorganized records in order – sometimes by fabricating them. As stated by Judge Bazelon when he resigned from the ACA's board, "Prison officials are informed of impending [ACA] visits months in advance, thereby enabling them to put on a 'one-day shine' for auditors."

In spite of the fact that the NCCHC and ACA have proven to be paper tigers with respect to improving conditions in prisons and jails – given the voluntary nature of their accreditation standards, which have no legal weight relative to constitutional requirements – both are doing fairly well financially.

Former NCCHC president Edward Harrison pointed out that the organization has no membership and does not collect dues. Yet in its 2014 Form 990 for non-profits, the NCCHC reported gross revenue of \$4 million. Of that amount, just over \$2 million was paid out in salaries and benefits plus \$1.7 million for other expenses, leaving a net profit of approximately \$256,000. About half the total revenue – \$2 million – came from accreditation contracts with government agencies and professional certifications. NCCHC president and CEO Thomas L. Joseph received \$156,899 in compensation in 2014; that represented around half his salary, as he didn't join the organization until June of that year.

The 2013 Form 990 for the ACA, the most recent available, showed gross revenue of \$9 million. The organization paid \$3.17 million in salaries and benefits, and \$4.8 million for other expenses. The ACA's net profit for 2013 was just under \$1 million; it received more than half its revenue (\$4.6 million) from accreditation contracts. ACA executive director James A. Gondles, Jr. received a salary of \$302,527 in 2013 plus \$77,787 in "other compensation."

At least one other group provides accreditation for medical care in detention facilities. Founded in 1951, The Joint Commission, a non-profit, states its mission is "...to continuously improve health care for the public, in collaboration with other stakeholders, by evaluating health care organizations and inspiring them to excel in providing safe and effective care of the highest quality and value."

While most of its clients are hospitals and other medical centers, The Joint Commission has accredited healthcare programs in 90 prisons and around 50 jails nationwide – including the CCA-run Adams County Correctional Center in Mississippi, a CAR facility where a major riot broke out in

May 2012 that resulted in 20 people being injured and the murder of CCA guard Catlin Hugh Carithers.

One of several complaints that led to the uprising was inadequate medical services. The facility was accredited by The Joint Commission in November 2010 for ambulatory care – two months before CCA was cited for the death of a prisoner who did not receive “appropriate and timely” treatment – and accredited on January 19, 2012 for behavioral health care – the latter just four months before the uprising. The prison was also accredited by the ACA at the time. [See: PLN, June 2014, p.48].

Although The Joint Commission has the benefit of not being composed of or unduly influenced by corrections officials, and makes its accreditation information and reports publicly available, it still apparently suffers from some of the same deficiencies as accreditation from the ACA and NCCHC.

“Time and time again I have seen or heard of instances in which corrections officials have used the [ACA] commission for their own needs,” observed Judge Bazelon, as reported by the New York Times in 1982. “They have used it to deflect public criticism and scrutiny of their management, to boost their standing with governors and legislators, to ward off judges and lawsuits and to pat themselves on the back. They have used it to paper over crises in corrections with certificates of ‘excellence.’ They have used it, in short, for their own propaganda needs.”

### **Not much has changed over the years.**

“Holding correctional facilities accountable to specified standards is a worthy goal,” said Ken Kopczynski with the Private Corrections Institute, in a January 31, 2014 press release. “However, the ACA’s accreditation process is lacking in that regard; the organization has an inherent conflict of interest in accrediting correctional facilities when ACA officials who are current and former corrections employees evaluate other corrections officials. The ACA is also dependent on the fees it charges for accreditation, there is no independent oversight of the ACA, it sets its own standards for correctional facilities and it’s influenced by the private prison industry, which is more concerned with profit than public safety.”

Accreditation by the ACA and NCCHC is often described as the “gold standard” for corrections agencies. Yet based on the inherent limitations of accreditation, and the conflicts of interest and paper audit, fee-based business model of those two organizations, it might more accurately be referred to as fool’s gold.

Sources: *ACA Form 990 (2013)*; *NCCHC Form 990 (2014)*; *House Subcommittee testimony of NCCHC President Edward Harrison (June 4, 2008)*; “The Accreditation” by Judge David L. Bazelon, *Corrections Magazine* (Dec. 1982); *NCCHC revocation letter to Sheriff Joe Arpaio (Sept. 25, 2008)*; <http://fusion.net>; [www.clarionledger.com](http://www.clarionledger.com); [www.aca.org](http://www.aca.org); [www.oaoa.com](http://www.oaoa.com); [www.jointcommission.org](http://www.jointcommission.org); [www.tulsaworld.com](http://www.tulsaworld.com); [www.yourhoustonnews.com](http://www.yourhoustonnews.com); [www.chron.com](http://www.chron.com); [www.azcentral.com](http://www.azcentral.com); [www.ncchc.org](http://www.ncchc.org); [www.abc15.com](http://www.abc15.com); [www.phoenixnewtimes.com](http://www.phoenixnewtimes.com); [www.hesperianstar.com](http://www.hesperianstar.com); <http://truth-out.org>; [www.tseaonline.org](http://www.tseaonline.org); [www.expressnews.com](http://www.expressnews.com); [www.grassrootsleadership.org](http://www.grassrootsleadership.org); <http://archive.pahrumpvalleytimes.com>; [www.vice.com](http://www.vice.com); [www.mtc trains.com](http://www.mtc trains.com); [www.texasobserver.org](http://www.texasobserver.org); [www.prisonpolicy.org](http://www.prisonpolicy.org); [www.abc7news.com](http://www.abc7news.com); [www.sfgate.com](http://www.sfgate.com);

*www.fox5atlanta.com; www.corizonhealth.com; www.maricopa.gov; www.cca.com; www.aclu.org; www.clevescene.com; New York Times; PCI press release; www.qualitycheck.org; www.thenation.com*

## Endnotes

*Quis Custodiet Ipsos Custodes*: Latin, from the Roman poet Juvenal: “Who watches the watchmen?” (also sometimes translated as “Who will guard the guards themselves?”)

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# SILVER STATE POST

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## MSP employees misusing state e-mail system

By Sarah Frazer  
Interim Editor

Some 80 of the 630 employees of Montana State Prison are facing disciplinary action after a month long investigation into the misuse of the state e-mail system, according to the Department of Corrections.

In a release sent from the Montana Department of Corrections in Helena, it was stated that after a month long investigation into the misuse of the e-mail system, it was discovered that MSP employees were using the state computers to exchange personal messages,

chain letters, videos, jokes and pictures or drawings. In some cases, the release said, the items were sexually explicit and contained racial humor, sexual remarks and nudity.

According to minutes released from the October 2 staff meeting, Deputy Warden Ross Swanson "said that what he has had to deal with in the last few days...is the most disgusting, disappointing thing he has ever seen."

About 47 employees face disciplinary actions ranging from counseling to termination, said Warden Mike Mahoney.

According to the release, the FBI and the Powell County Sheriff's Office were

contacted, but both entities declined to become involved in the matter.

"We're not going to tolerate state employees doing this," Mahoney said. "Our employees have an obligation to the taxpayers of Montana to conduct state business on state time. Using the state e-mail system to send jokes and other personal messages is a betrayal of public trust."

A memo sent to all MSP employees cited this is not the first time MSP has had problems with e-mail misuse. The memo states, "In May and December of 2006, inappropriate e-mail and Internet usage by MSP, MCE (Montana Correc-

tional Enterprises, and DOC (Department of Corrections) staff was addressed by Director Bill Slaughter and Deputy Warden Swanson. At that time a number of department employees were using the State e-mail system to send copies of cartoons, jokes, pictures, and racially and sexually offensive items in violation of Department and State policy."

The memo also stated there "were significant amounts of time being spent utilizing these systems for personal business or as chat rooms."

The memo encourages employees to report any e-mail misuse. "When sending e-mail messages, staff should not

include anything they are not prepared for the public to review and read. One should consider how co-workers, peers, family and children would view their e-mail actions if they were made public," said the memo.

"This activity is totally unacceptable for Department of Corrections employees and we take it extremely seriously," said Corrections Director Mike Ferriter. "It's discouraging because this type of behavior distracts the department and the prison personnel from their crucial roles of protecting public safety by managing thousands of offenders on behalf of the people of the state of Montana."

**Cut to 2021:** Many of the Montana State Prison employees involved in the unlawful and immoral conduct of the past are now in managerial positions with Montana Department of Corrections or still working at Montana State Prison. Why have their ranks been elevated? Why are we still paying their salaries? Their behaviors have not changed. Over time they have gone back to their criminal minded behaviors. These are the Prison staff who are named time and time again in complaints to the Montana Human Rights Bureau, in 1983 complaints and in grievance that are repeatedly deemed "unsubstantiated" and dismissed by prison staff through the internal inmate grievance "kite" system. Retaliation is a guarantee for those who dare file a kite against an MSP staff member. Incarcerated individuals will inevitably receive a write up of "insolence" or some other form of retaliation. It is time to connect the dots and realize that these kites ARE indeed legitimate complaints. An important side note is that Powell County Sheriff's Office and the Federal Bureau of Investigations declined involvement in the investigation. Why are they untouchable? Why have the personnel files of these employees disappeared? Why did the then-HR manager tell Reginald Michael that the State no longer keeps Employee performance reviews? After 14 years, it is time to put an end to the ongoing corruption within the Montana Department of Corrections, once and for all. It is time that Montana evoke "public safety". Prohibit predatory prison personnel who have YET TO BE CONVICTED from watching over prisoners.