

DEPARTMENT OF CORRECTIONS



STEVE BULLOCK, GOVERNOR

5 SOUTH LAST CHANCE GULCH

STATE OF MONTANA

(406) 444-3930
FAX (406) 444-4920

PO BOX 201301
HELENA, MONTANA 59620-1301

November 7, 2013

VIA ELECTRONIC MAIL

Michael L. Alston
Attorney Advisor
Review Panel on Prison Rape
U.S. Department of Justice

Dear Mr. Alston:

Please find attached the Montana Department of Corrections testimony, submitted to the Review Panel on Prison Rape on the department's behalf by Montana State Prison Warden Leroy Kirkegard.

As the new director of Corrections under Governor Bullock's Administration, I appreciate the opportunity to inform the Panel of Montana's significant efforts to meet the national PREA standards.

Should you have questions about Warden Kirkegard's testimony, please contact the department's director of communications, Judy Beck, at (406) 444-0409 or jbeck@mt.gov.

Sincerely,

A handwritten signature in black ink that reads "Mike Batista".

MIKE BATISTA
Director
Montana Department of Corrections

cc Colleen Ambrose, Acting Chief Legal Counsel, DOC
Ali Bovington, Deputy Chief of Staff, Montana Governor's Office
Leroy Kirkegard, Montana State Prison Warden

**Testimony of Montana State Prison Warden Leroy Kirkegard
to the Review Panel on Prison Rape
in Response to the Bureau of Justice Statistics Report:
Sexual Victimization in Prisons and Jails, Reported by Inmates, 2011-12
November 7, 2013**

On behalf of Director Mike Batista and the Montana Department of Corrections, I am Montana State Prison Warden Leroy Kirkegard.

Before returning to Montana two years ago to run the state prison, I spent 20 years with the Las Vegas Metropolitan Police Department, Detention Services Division. I started as a correctional officer and worked my way up to deputy chief of the LVMPD Detention Services Division, where I was responsible for 3,400 offenders, 1200 staff, and a budget of \$174 million. I am also a military veteran, having served in the U.S. Air Force for a decade.

As warden of the state men's prison in Montana, I am now responsible for 2,400 offenders, 600 staff and oversight of a \$74 million budget, which includes contract placement of approximately 840 offenders. The Montana State Prison houses offenders at all custody levels, from inmates under a death sentence to low security offenders. It is the only facility in the state that provides sex offender treatment.

The secure perimeter of the Montana State Prison, which opened in 1977, encompasses approximately 68 acres on the outskirts of Deer Lodge, a rural town in southwestern Montana with a population of 3,118.

- The facility opened in 1977 with three housing units, each designed for 96 offenders. Those three units now each house approximately 162 offenders. Other units were added in the late 1970s, two more units in 1986, and the newest housing facility within the secure perimeter was completed in 1990.
- The Work Reentry Center was initially opened in 1997 and, in 2006, expanded to house 192 offenders. The Work Reentry Center is not a part of the secure facility and houses minimum security offenders who work on the Prison Ranch.
- The Martz Diagnostic Intake Unit (MDIU) was completed in 2004 and can house 180 offenders prior to placement in the facility.

The Montana Department of Corrections and the Montana State Prison have a zero tolerance policy in reference to the sexual victimization of incarcerated offenders. The prison's Code of Ethics, attached as Appendix A, is the basis I expect all employees to follow, from new hires to seasoned veterans. Based on a long career in corrections, I can testify that Montana State Prison employees are diligent in their duties and in their on-going efforts to ensure the safety of offenders, security staff and civilian staff at the facility.

The age and diversity of the campus present a number of challenges. These different units were built with the technologies of their respective times, with little in the way of video and

audio monitoring, or other technological resources. As funding has become available, the prison has added cameras, upgraded intercoms, and added or upgraded software, but not to the level necessary to fully modernize a facility first occupied 36 years ago.

While zero tolerance is a primary goal at the Montana State Prison, the reality is that, given the lack of modern infrastructure, the shortage of staff and funding, and other challenges, it is difficult to ensure that sexual victimization will never occur. As of November 1, 2013, despite ongoing recruitment efforts, the prison was operating with 46 correctional officer positions vacant out of 344 authorized positions, representing a 13.4% vacancy rate.

In 2011, as part of the BJA Demonstration Site grant, the Montana Department of Corrections submitted a request to the U.S. Department of Justice for PREA implementation. The original application requested a total budget of \$1,020,523 which included federal funding of \$580,642 and local matching funds of \$439,881 for a three-year project.

Due to significant cuts to the federal budget, BJA approved an award for the Montana Department of Corrections but cut approximately \$350,000 of the federal funding and one year from the project. The amount of federal funds awarded was only \$236,275 for a two-year project period. These monies were used to hire a DOC level PREA coordinator to continue oversight of PREA standards across the department. The reduced funding limited our ability to expand the capacity in our investigations unit, as well as decreased training opportunities designed to help staff further facilitate PREA implementation.

Nonetheless, over my two-year tenure as warden, in conjunction with the efforts of the department's PREA coordinator, the prison has been more proactive in its implementation of PREA standards. Through a range of policy and procedural changes, expanded staff training, and education and outreach initiatives, the department has made and is continuing to make a concerted effort to become compliant with PREA standards. A summary of the steps the department has taken is provided in Appendix B.

The Montana Department of Corrections recognizes that there have been gaps in our policies and processes, and we have worked diligently to fill those gaps. A PREA working group comprised of affected division administrators and other personnel meets on a monthly basis and is tasked with establishing consistent PREA reporting procedures within the state prison and other DOC facilities, including our contracted facilities.

Since 2008, the prison has recognized the importance of PREA and has implemented a number of concrete changes, including improvements pertinent to inmate education and reporting. These include development of a new reporting mechanism – an anonymous telephone hotline staffed by the YWCA in Missoula was initiated in 2013. In addition, inmates can report any type of victimization through medical kites, direct contact with security staff, and family members alerting staff to sexual victimization allegations.

It may well be that part of the underlying reason for the number of sexual assaults reported is not based on an increase in the number of assaults, but on an increased awareness among inmates of PREA policies and reporting mechanisms. For example, all inmates who come to the state prison first go through the Martz Diagnostic Intake Unit. Since December 2006, while they are at MDIU, every inmate receives training and guidance about the prison's zero tolerance stance toward sexual victimization and the need to abide by the *Prison Rape Elimination Act of 2003*.

As part of this training and guidance:

- Case managers must complete the *Prison Rape Elimination Act (PREA): Risk Assessment* form during classification.
- Inmates receive *MSP Procedure 1.3.14, Prison Rape Elimination Act of 2003 (PREA)* for review. A staff member reads and explains the procedure to any inmate who is not able to read it for himself.
- Inmates are given substantial time to review all PREA procedures.
- Formal policy review is conducted with all inmates concerning *MSP Procedure 1.3.14, Prison Rape Elimination Act of 2003*.
- A PREA video, titled *Speaking Up*, is shown to all inmates.
- Upon completion of the PREA training, all inmates must sign the *Offender Prison Rape Elimination Act (PREA) Acknowledgement Form*.

While in the Martz Diagnostic Intake Unit, all inmates undergo a comprehensive assessment, including medical and mental health, sexual victimization history, sexual orientation, and the more routine classification assessment. Weekly follow-up is conducted with offenders identified as vulnerable or at an increased risk of victimization, and placement is determined based on these on-going assessments. The information is placed in the Offender Management Information System (OMIS) and is accessible to all staff to help ensure that inmates are protected to the best of our ability. The availability of this information system is helping unit managers, case managers, supervisory staff and officers make better decisions on offender placement and provides the necessary information to all staff to better protect inmates and hold offenders accountable for their actions.

Staff training in PREA standards has also increased over the past two years. All new employees at Montana State Prison are required to attend a New Employee Orientation class. This is an 88-hour class, five hours of which are related to PREA compliance. Security staff must also attend the Corrections and Detention Officer Basic course at the Montana Law Enforcement Academy. Two hours of this four-week class are dedicated to PREA awareness and compliance. In addition, the MSP Training Section offers classes in the following areas (with the number trained since the BJS report was issued):

- **Crossing Professional Boundaries:** a four-hour class focused on maintaining a professional relationship between staff and offenders; 429 trained.
- **Sexual Harassment/Discrimination:** a four-hour class that covers interaction between staff and offenders; 433 staff trained.

- PREA Compliance: 300 staff trained. This course is being revamped to include updated policies and PREA Standards.

Since the NIS 3 Survey was anonymous, the department is unable to accurately identify specific factors relating to the high incidence of allegations reported in the survey. Records from the Grievance/Hearing Officer designated as the PREA Liaison for the Montana Department of Corrections indicate that there were 12 staff-on-inmate PREA complaints and nine inmate-on-inmate complaints from the prison during the time frame of the survey (February 2011 through May 2012).

The Department of Corrections takes seriously and investigates thoroughly all reports of sexual victimization in its prison facilities. We suspect that many of the staff-on-inmate complaints were related to the manner in which two correctional officers conducted clothed pat-down searches. These allegations were thoroughly investigated and no evidence of wrongdoing was found. The officers were observed conducting searches, at times without their knowledge, and were found to consistently follow to the letter the procedure for conducting body searches. In fact, one of the officers accused excelled at finding contraband on inmates, which potentially made him a “target” for inmates who would prefer that officers searched less effectively.

That said, the department recognizes that PREA is founded upon an understanding of the nature of sexual abuse and harassment in confinement. As with victims of child sexual assault and domestic violence, inmates who are victimized should be taken seriously and the harm done to them should not be minimized or viewed as inconsequential. The difficulty is in distinguishing inmates who have been victimized from those who misuse the reporting process. Based on the reviews of the inmate complaints related to sexualized pat searches, the department determined that most were part of an orchestrated campaign among inmates to discredit particular officers.

On Nov. 6, 2013, the department posted its PREA coordinator position, which has been reclassified to elevate it within the organization, at a higher pay level. I look forward to working with Montana’s new PREA coordinator to build on the solid foundation we have laid over the past two years.

Thank you for the opportunity to present testimony on the efforts underway at the Montana State Prison and throughout the Department of Corrections to implement the new PREA standards. While we recognize that there have been gaps in our reporting process in the past, we are continuing to make substantial progress – progress that reflects our genuine commitment to a high standard of ethical conduct that includes providing offenders with “humane custody and care, void of retribution, harassment, abuse or mistreatment.”

Montana State Prison Code of Ethics

1. I shall perform my duties with high standards of honesty, integrity and impartiality, free from personal considerations, favoritism and partisan demands. I shall be courteous, considerate and prompt when serving the public.
2. I shall maintain respect and professional cooperation in my relationships with other department staff members. I will not sexually harass or condone sexual harassment of any person. I shall treat others with dignity, respect and compassion.
3. I shall report job-related illegal or unethical behavior to the appropriate authority.
4. I shall provide offenders with humane custody and care, void of retribution, harassment, abuse or mistreatment. I shall maintain confidentiality of information that has been entrusted to me and designated as such. I will not incur any personal obligation that could lead any person to expect official favors.
5. I will not discriminate against any offender, employee or member of the public on the basis of age, race, gender, religion, creed, political belief or national origin.
6. I shall conduct myself in a manner that will not demean offenders, fellow employees or others.
7. I shall uphold the tenets of the United States Constitution, its amendments the Montana Constitution, federal and state laws, rules and regulations, and policies of the department.
8. Whether on or off duty, in uniform or not, I shall conduct myself in a manner that will not bring discredit or embarrassment to the Department of Corrections and the state of Montana.
9. I will not use my official position for personal gain.
10. I shall maintain acceptable standards of personal hygiene, grooming and neatness while on duty or otherwise representing the department.

###

Montana Department of Corrections PREA Status Report
July 2012 through October 2013

- Designated priorities and objectives for updating PREA compliance requirements.
 - Revised the Department of Corrections (DOC) PREA Policy
 - Completed the DOC PREA Standard Operating Procedures Manual
- Built PREA implementation strategy based upon centralized initiative and process delegation to facility-based operations.
- Communicated PREA priorities, objectives and strategy to management team, via management team briefing in December 2012, and through various electronic and personal communications with division administrators.
- Developed coordination plan for implementing and monitoring PREA program for cohesiveness throughout DOC and state of Montana.
- Conducted public relations and liaison with county and local jail officials and law enforcement, community-based service delivery organizations, volunteer networks, and medical and mental health partners.
- Continued outreach and liaison with community-based service providers including YWCA, Montana Coalition Against Domestic and Sexual Violence and Planned Parenthood.
- Developed and delivered PREA hotline training for YWCA and the Correction & Detention Officer Basic course at the Montana Law Enforcement Academy.
 - That training has now been integrated into the course curriculum.
- Sexual Assault Nurse Examiners (SANE) Project initiated to train nurses at the medical facilities that treat inmates.
 - Delivered PREA training for nurses and MT SANE Conference in Great Falls.
- Utilization of the Offender Management Information System (OMIS) software, by all staff, to ensure the safe and secure placement of inmates designated as vulnerable to sexual victimization.
- Staff Training:
 - Conducted DOC PREA training pilot (May 28-29, 2013) for new employee orientation and to update existing staff.
 - Integrated that training into the department's ongoing staff training. A comprehensive training schedule has been developed for:
 - all DOC staff, contractors and volunteers, including not just prison staff but staff from the Adult Community Corrections Division and Probation and Parole statewide
 - County detention staff, contractors and volunteers
 - Evaluated the train-the-trainer PREA pilot and revised for department-wide implementation

- Training for Trainers completed for jail personnel and DOC training personnel
- Once developed, moved all of the PREA training duties to the DOC Professional Development Bureau as part of its ongoing, agency-wide training schedule.
- Negotiating the addition of PREA language to existing DOC contracts – the DOC Contracts Bureau is in the process of revising all contracts and memorandums of understanding.
- Launched PREA Workgroup to include affected division administrators and other personnel. Group continues to meet monthly.
 - PREA Workgroup provided with coordinated response plans and staffing plans.
 - Workgroup assigned to establish PREA reporting procedures subset to PREA Policy.
- Completed foundational preparation with Missoula YWCA and the Montana Coalition Against Domestic & Sexual Violence to establish a PREA Hotline from Montana State Prison/Powell County and Missoula Assessment & Sanction Center (MASC), Missoula Pre-Release Center, Probation & Parole, Sheriff Offices/County Jails in Sanders, Lake, Missoula, Ravalli and Grant counties.
 - Inmate Call Service Provider (Telmate) established protocol for anonymous reporting to YWCA Hotline using 511 number
 - MOU completed to be signed by DOC and YWCA for six-month pilot test.
 - 375 PREA posters printed and delivered to offices of all agencies served by Missoula YWCA pilot hotline.
- Decentralized efforts to empower facility-based compliance and policy development. Offender materials updated and model policies made available to contract facilities.
- Completed data collection, analysis and self-reporting/self-assessments based on PREA standards.
- Conducted outreach with 72 jails statewide, Montana Nurses Association, Montana Association of Counties and all DOC facilities. Montana’s PREA coordinator personally visited every facility.
- Conducted PREA training at the annual Montana Correctional Association conference.
- Reclassified the PREA Program Manager position ready for re-posting of vacant position – reclassification elevated position within DOC organization and substantially increased pay.
 - PREA coordinator position will be posted in coming months.
- Revising reporting forms to establish consistent reporting processes among DOC and contract facilities.
 - Developing a follow-up checklist so that every incident is reviewed at required levels.
- Distributed BJA audit reporting tools/self-audits to all facility administrators.

###

