

June 24, 2014

Representative Margaret MacDonald  
Chair, Law and Justice Committee  
4111 June Drive  
Billings, MT 59106-1565

Jent  
handout

Dear Madame Chairman,

I would like to present this information for consideration by your committee in relation to your current review of the Montana Board of Pardons and Parole policies and procedures.

My son, Flint Schaplow, was diagnosed with co-occurring disorders of schizophrenia and addiction in 2009. He was sentenced in Gallatin County in 2010 to serve 5 years for substance abuse related felonies. He was required by the court to complete a 9 month DOC substance abuse program and would then be granted parole for the remainder of his

Here is a summary of the issues relevant to the MBOPP in regards to my son's incarceration in the DOC system:

- Flint enters WATCH in January 2011 unmedicated. He begins to decompensate in March. When he becomes severely psychotic in May, he is transferred to Montana State Prison. He is involuntarily treated by injection in August 2011. He remains at MSP until March 2012, when he is allowed to appear in front of the Parole Board. The Board requires that he complete the 9 month substance abuse program at NEXUS and a six month period at a Pre Release Center before they will grant him parole.
- Flint is an outstanding resident at NEXUS and upon completion; he is transferred to the Helena Pre Release Center. While there, Flint works 2 jobs and saves \$3500. He regularly attends AA meetings and works weekly with his sponsor.
- Flint is released on a 10 day furlough to Bozeman in August 2013. On his initial visit to the Parole Office, his UA tests positive for marijuana. Flint protests the results and in direct violation of Montana Department of Corrections P & P 160, the Gallatin County Parole Officer, Larry Wahl, and the Parole Board refuse to submit another urine sample to the state lab for confirmation. I've attached a copy of the P & P for your review. (pg 5)
- Flint is detained at the Gallatin County Jail and MSP until November 2013 and must appear in front of the Parole Board again. He is required to complete a 2 month substance abuse program at Connections Corrections in Butte. He enters the DOC program in December 2013 and completes the program in good standing.
- In February 2014, Flint is once again released on furlough to Missoula. He is unmedicated. There is no community reentry program in place in Missoula to assist Flint with finding housing or employment. Within one week of his release, he becomes severely psychotic and is detained by his Parole Officer, Tucker Hood. ***Please let me emphasize, he was detained due to his psychosis, not as a result of reoffending or violating his parole.***
- Flint is transferred back to MSP, where he spent the first 9 weeks in lockdown (solitary confinement). ***As of today, 4 months after his detention, he is still at MSP.***

I'm not in any way defending the fact that Flint broke the law or contesting that he shouldn't have been sentenced to time in the Montana Department of Corrections.

However, Flint has now served 3 ½ years of a 5 year sentence for a nonviolent crime. **1 ½ years of that time has been spent at MSP simply as a result of his mental illness.** During much of that time, Flint was severely psychotic and confined in lockdown, 23 hours a day, eating meals in his cell and not allowed to exercise or attend groups. As a result of inappropriate treatment, not only has Flint's psychosis intensified, his chances for a full recovery in a timely manner have been put at risk.

Thank you for consideration of my son's story. I hope it helps your committee to create legislation that will make vital changes to a seriously flawed system.

Sincerely,

A handwritten signature in cursive script that reads "Annette Lilly Russ". The signature is written in black ink and is positioned above the printed name.

Annette Lilly Russ

Cc: Senator Larry Jent



**PROBATION AND PAROLE BUREAU  
STANDARD OPERATING PROCEDURES**

Procedure No.: P&P 160-1	Subject: <b>STANDARDIZED OFFENDER DRUG SCREENING / TESTING PROGRAM</b>	
Reference: DOC 3.1.20 45-9-102, MCA; 46-18-207, MCA; 53-1-203, MCA	Page 1 of 7	
Effective Date: 06/01/00	Revision Dates: 09/10/01; 03/01/05; 08/01/05; 06/12/06; 10/27/06; 02/02/07; 10/01/13	
Signature / Title: /s/ Ron Alsbury, Probation & Parole Bureau Chief		

**I. BUREAU DIRECTIVE:**

The Probation & Parole Bureau will strive to maintain zero tolerance regarding the unauthorized use and abuse of controlled or prohibited substances by adult offenders; therefore, Bureau employees will follow established procedures for drug testing and screening.

**II. DEFINITION:**

Bureau – The Montana Probation & Parole Bureau.

Cause – Any indication that an offender may be using an unauthorized substance or any substance in an unauthorized manner. Such indication may be direct (observed by a staff person), hearsay (relayed through other individuals), circumstantial (perceived via reasonable inference), or self-admission.

Confirmatory Testing – Refers to a laboratory testing process performed by the Montana Forensic Science Division, State Crime Lab to confirm the presence of a drug or molecule within a testing sample. Used when offender does not admit to drug use after receiving a positive sample result.

Department – The Montana Department of Corrections.

Drug – Any substance described in §50-32-101, MCA, or any substance taken through any means of administration, which alters the mood, the level of perception, or brain functioning. Such substances range from prescription medications to illegal substances, as well as alcohol, synthetic intoxicants and solvents.

Drug Testing – The chemical analysis of urine using specialized equipment and techniques to identify the presence of a drug or drug metabolite collected from an individual.

DTC-Drug Testing Coordinator – Staff person selected by the Department Director and responsible for overseeing and tracking the Department-wide offender drug testing program.

DTL-Drug Testing Liaison – The staff person designated by the appropriate administrator to coordinate facility/program drug testing and reporting functions with the DTC.

OMIS-Offender Management Information System – The Department’s electronic data collection and reporting system.

Positive Sample – An initial screen and/or a confirmatory screen showing the presence of a controlled or prohibited substance meeting or exceeding levels determined by the American Bio Medica Corporation.

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Random Testing – The urinalysis screening, without cause, of a selected group of offenders for substance abuse. List of selected offenders is generated by OMIS.

Rapid-Result Screening Tests – On-site field-test kits that use immunoassay technology to identify the presence of drugs in a biological specimen at a particular minimum concentration.

### III. PROCEDURES:

The Bureau will promote a drug-free standard and offender accountability with a standardized drug screening and intervention program, which includes a random testing requirement, for the following purposes:

- to identify offenders who are using drugs and identify types of drugs used;
- to identify offender treatment needs and provide treatment strategies designed to meet those identified needs;
- to provide appropriate interventions and/or sanction for every offender who tests positive for drugs;
- to properly identify supervision level of offenders who pose a risk to public safety due to their drug abuse; and
- to reduce drug use/abuse among offenders, which is intended to reduce disciplinary actions among offenders and reduce returns to secure facilities.

The Bureau's Probation & Parole Officers (Officers) will implement this procedure without discrimination on the basis of race, religion, gender, national origin, creed or political belief. Officers, Probation Officer Technicians and Probation Officer Assistants will be trained on the process of urine specimen collection. Law enforcement and other trained professionals may also conduct the test at the request of the Department.

#### A. URINALYSIS DRUG TESTING:

The *Drug/Alcohol Screening Information Form* is generated through OMIS once the Substance Test record is completed and saved. It must be printed, and completed, signed and dated by the offender and placed in his/her field file:

- with each urinalysis test,
- when offender refuses to submit a specimen, or
- upon offender's admittance to substance use prior to testing and a urinalysis test is not completed.

The *Chain of Evidence* is also generated through OMIS and will be printed and completed with each urinalysis test.

1. If ordered by the court, Offenders, will be required to provide a urine specimen within the first 45 days of initial meeting. Thereafter, offenders will be tested:
  - by random testing as determined by OMIS;
  - as necessary for cause;
  - as a condition of release to prerelease, parole or an intensive supervision program; or
  - upon return to a correctional facility from the community.

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- a. Upon placement to or release from a facility while on supervision, offenders will be made aware that they are subject to random testing at any time during their supervision or placement.
- b. Random testing will be determined by the OMIS fully randomized testing system which chooses a minimum of 5% of the offender population each month.
- c. Entries into the chosen offender's Chronological History will be generated by OMIS at the following steps:
  - i. when the offender is chosen and his/her supervising Officer is notified;
  - ii. once testing is complete and information is entered and saved in OMIS Substance Test record;
  - iii. if testing was not completed within 40 days after Officer receives notice.
- d. Officers receiving notice from OMIS of offenders chosen for testing will complete urinalysis test and OMIS Substance Test record within 30 days. OMIS will lock the record as not completed on the 40<sup>th</sup> day; however, Officers will be able to enter an explanation in the offender's chronologicals as to why testing was not completed.

**3. For-Cause Testing**

- a. For-cause testing may be administered at any time for reasons including, but not limited to, the following circumstances :
  - i. anytime there is reason to suspect an offender has recently used drugs;
  - ii. testing is a requirement of a treatment or training program;
  - iii. an incarcerated offender has had community contact; or
  - iv. offender misses a commitment/meeting.
- b. Entries into the offender's chronologicals will be generated by OMIS once testing is complete and testing information is entered and saved in OMIS record by Officer.

4. Urine samples collected during a home visit will be gathered using the evidence kit in the Officer's vehicle. Samples will be labeled with an evidence tag, packaged in a tamper proof container, and refrigerated at Probation & Parole office. The Officer requesting the sample and the Officer taking custody of the evidence will both initial the container.

**5. OMIS Substance Test Record**

Each entry in the record must be completed with each testing, taking special notice of the following questions:

- a. "Is this the initial drug screening for entry into program/facility or community supervision?" If answer is "Yes," a reason **MUST NOT** be chosen as this test cannot be conducted for any other reason.
  - b. "Is this a random drug test?" If answer is "Yes," a reason **MUST NOT** be chosen as this is the OMIS-generated test and cannot be conducted for any other reason.
  - c. If answer is "No" to both questions, a reason for testing **MUST** be chosen as this test must be identified as being conducted for a specific reason.
6. Urine will be the primary specimen tested using the rapid-result screening test.
    - a. Offenders will be given an opportunity to admit substance use prior to providing a urine specimen.
    - b. The offender has one (1) hour to comply with a request for a urine specimen; however, additional time may be granted. If necessary, the offender should be given eight (8) ounces

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- of water and remain under staff supervision until the specimen is provided. Failure to provide enough urine to comply with test requirements will result in sanctions.
- c. Failure to provide specimen after one (1) hour, or the additional time granted, will be considered a refusal. Officer will complete OMIS Substance Test record selecting "sample not taken" and adding comment.
  - d. Offenders refusing to provide a specimen demonstrate an admission of guilt. A hearing or other sanction(s) will be necessary as a result of a refusal. Officer will complete OMIS Substance Test record selecting "sample not taken" and adding comment.
  - e. A hearing will be required if an offender is found tampering with the sample collection (i.e. adulteration, substitution). Officer may send sample to the Montana Forensic Science Division, State Crime Laboratory (State Crime Lab) for testing if tampering is suspected.
  - f. Offender will also be given an opportunity to admit substance use upon a positive sample test result.
7. If the offender admits to the use of illegal substances prior to testing, no urinalysis is required; however, Officer may complete for-cause testing to ensure other drug use not admitted to is present:
- a. Steps outlined in #8 below for conducting test are followed if urinalysis is taken;
  - b. If urinalysis is not completed, Officer will complete OMIS Substance Test record selecting "sample not taken" and adding comment. *Drug/Alcohol Screening Information Form* is generated and printed. The offender will complete, sign and date the *Form*, which is then placed in his/her field file, and subsequent disciplinary action will follow;
  - c. Confirmatory testing will not be done when offender admits to drug use upon positive sample result;
  - d. Confirmatory testing will not be done to track drug usage or drug quantity levels.
8. Rapid-Result Screening Tests
- a. Officers conducting testing must:
    - i. complete OMIS Substance Test record each time an offender is tested;
    - ii. wear protective gloves when obtaining sample. Additional personal protective equipment is optional;
    - iii. use one of the Bureau-approved American Bio Medica Corporation (ABMC) test-kits for all rapid-result screening tests. Re-testing using additional strips will NOT be done.
      - 1) 5 panel: THC,COC,MTH,AMP,OPI300;
      - 2) 5 panel: THC,COC,BZO,MTH,OPI300; and
      - 3) 1 panel: Selected drugs.
    - iv. comply with the specimen collection procedures recommended by Department-contracted vendor;
    - v. be thoroughly trained in collection procedures;
    - vi. be the same gender as offender;
    - vii. label the collection cup with offender's DOC ID number, date, Officer's initials, and note test type – random or for-cause – prior to requesting sample;
    - viii. collect sample in a private setting;
    - ix. carefully, closely, and directly observe the offender's urine flow from body to collection cup;

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**C. PORTABLE BREATH OR BREATH ANALYZER TESTING**

1. Breath testing shall be conducted by Officers or local law enforcement to test offenders suspected of alcohol use and will be conducted in accordance with the instructions of the testing device manufacturer. These devices shall be maintained in a secure location and will be one of the following:
  - Portable Breath Test Device (PBT)
  - ABMC ALCO Screen Instrument
2. Each test will be recorded in the offender's chronological history, and should include the date and time of test, a brief statement describing the reason for the test, and the results.
3. The Officer will appropriately confront the offender when test results are positive. The offender will provide a statement of admission on *DOC 3.1.20 (Attachment) DOC Drug/Alcohol Screening Information* and then be sanctioned and referred to treatment when appropriate.

**D. BLOOD DRAWS**

Officers will NOT request an offender to submit to an involuntary blood draw by law enforcement.

**E. OFFENDER SANCTIONS**

Offenders may be subject to the following sanctions:

1. First positive urine test – minimum sanctions from the Officer, such as:
  - increased reporting
  - restricted travel
  - curfew
  - increased testing
  - electronic monitoring
  - community service
  - 1-3 days jail at own expense, when possible
  - Day Reporting Program

In addition, the Hearings Officer may require the offender to participate in any programming, counseling or further testing deemed appropriate, such as:

- self-helps as directed
- find a sponsor
- out-patient treatment
- intensive out-patient treatment
- in-patient treatment
- other counseling
- Cognitive Restructuring

2. Second positive urine test – increased sanctions from the Officer/Hearings Officer, such as:
  - restricted travel
  - increased reporting
  - electronic monitoring
  - curfew
  - 1-5 days in jail at own expense, when possible
  - increased testing
  - community service
  - Day Reporting Program

In addition, the offender may be required by the Hearings Officer to participate in any programming, counseling or further testing deemed appropriate, such as:

- self-helps as directed
- find a sponsor
- out-patient treatment
- intensive out-patient treatment
- in-patient treatment
- other counseling
- Cognitive Restructuring

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3. Third positive urine test – appropriate sanctions from the Officer/Hearings Officer, such as:
- self-helps as directed
  - Day Reporting Program
  - intermittent jail, i.e. weekends in jail
  - mandatory jail up to 7 days at own expense, when possible

#### F. FINANCIAL RESPONSIBILITIES OF OFFENDERS

1. Offenders may be charged the cost of the preliminary test kit when he/she refuses to admit drug use and a preliminary result is confirmed by the laboratory testing.
2. Offenders will only be charged the unit price associated with the preliminary Department-approved test kit; offenders may be exempt if on indigent status or is current on all restitution and supervision fees.

#### G. DUTIES OF DRUG TESTING LIAISON

1. Ensure that appropriate staff are trained in specimen collection protocol;
2. Collect required drug program data; and
3. Conform to drug program reporting requirements.

#### IV. CLOSING:

Questions concerning this procedure shall be directed to the Regional Administrator or designee.

##### Forms

OMIS

OMIS

DOC 3.1.20 (Attachment)

Drug/Alcohol Screening Information

Chain of Evidence

Drug/Alcohol Screening Information