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65th Montana Legislature

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TO: Committee Members
FROM: Julianne Burkhardt, Staff Attorney
RE: Administrative Rule Activity
DATE: August 27, 2018

Department of Justice (DOJ)

MAR 2018 Issue No. 14 (July 20, 2018) MAR Notice No. 23-3-252

The DOJ issued a NOTICE OF PUBLIC HEARING ON PROPOSED ADOPTION regarding a series of new rules addressing the issuance, replacement, or renewal of a REAL ID compliant driver's license or identification card. A hearing is scheduled for August 14, 2018, at 10:00 a.m. in the auditorium of the Department of Public Health and Human Services, 111 North Sanders, Helena, Montana.

The purpose of the REAL ID rules is to establish requirements for the issuance, replacement, or renewal of a REAL ID compliant driver's license or identification card. New Rule II is an extensive definition section. New Rules III through VI contain requirements related to a declaration of truth and accuracy, source document requirements, and translator requirements if the source documents are not in English. New Rules VII through IX address the requirements for proof of name and identity. New Rules X and XI address social security numbers and changes to an applicant's name or social security number. New Rules XII and XIII address proof of authorized presence in the United States and proof of Montana residency. New Rule XIV provides an exception process for individuals who are unable to present any of the required documentation for the REAL ID credential. The exception process requires alternative documentation and provides that the DOJ must review and make reasonable efforts to establish the authenticity of the alternative documents. New Rule XV provides a procedure for verification of the authenticity of documents presented by foreign nationals. New Rule XVI allows the DOJ to delay issuing a REAL ID credential in order to verify any document presented by an applicant. New Rule XVII requires a full facial digital photograph of each applicant. New Rule XVIII provides that the DOJ may only issue a temporary credential to a foreign national after verifying the individual's authorized presence in the United States. New Rule XIX prohibits holding more than one REAL ID credential at a time, however, a person may hold a REAL ID driver's license

and a non-REAL ID driver's license at the same time. New Rule XX addresses document retention and requires the DOJ to retain related documents for 10 years.

The 2017 Montana Legislature adopted Senate Bill 366, which authorized the DOJ to develop REAL ID compliant driver's licenses and identification cards. The federal government has adopted detailed rules found at 6 CFR Part 37 detailing the requirements for states in developing their process for the issuance, replacement, and renewal of REAL ID credentials. The new rules are designed to bring Montana into compliance with the federal requirements.

MAR 2018 Issue No. 15 (August 10, 2018) MAR Notice No. 23-16-255

The DOJ issued a NOTICE OF PUBLIC HEARING ON PROPOSED ADOPTION AND AMENDMENT regarding the adoption of two new rules pertaining to video gambling malfunctions and cash ticket validation systems and the amendment of ARM 23.16.101, 23.16.1802, 23.16.1901, 23.16.1902, 23.16.1903, 23.16.1905, 23.16.1906, 23.16.1907, 23.16.1907A, 23.16.1908, 23.16.1909, 23.16.1909A, 23.16.1910, 23.16.1910A, 23.16.1911, 23.16.1916A, 23.16.1918, 23.16.1920, 23.16.1927, 23.16.1928, 23.16.1931, and 23.16.2305 addressing definitions, video gambling machine specifications, and electronic live bingo and keno equipment specifications. A hearing is scheduled for September 6, 2018, in the conference room of the Gambling Control Division, 2550 Prospect Ave., Helena, Montana.

The DOJ issued a NOTICE OF ADOPTION regarding the adoption of three new rules pertaining to the imposition of an administrative fee for the refusal of an alcohol or drug test. The DOJ adopted the rules as proposed in MAR Notice No. 23-3-251 issued on May 25, 2018. No comments or testimony were received.

Public Safety Officers Standards and Training Council (POST)

MAR 2018 Issue No. 14 (July 20, 2018) MAR Notice No. 23-13-254

The POST issued a NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT AND REPEAL regarding ARM 23.13.102, 23.13.201, 23.13.203 through 23.13.210, 23.13.212, 23.13.215, 23.13.217, 23.13.301, 23.13.601, 23.13.702 through 23.13.704, and 23.13.714 and the repeal of ARM 23.13.211. These rules pertain to the certification of public safety officers. A hearing is scheduled for August 15, 2018, at 10:00 a.m. in Room 214 of the Karl Ohs Building of the Montana Law Enforcement Academy, 2260 Sierra Road East, Helena, Montana.

Several of the rule changes require the employing authority or department to track and maintain records of training completed by officers rather than the POST in an effort to reduce the resources utilized by the POST in tracking these records. The rule changes also clarify the requirements for each level of training, including the basic, intermediate, advanced, supervisory, command, and instructor certificates. Several rule changes address and clarify that the POST has the authority to deny an application for certification as well as the procedures for addressing allegations of officer misconduct.

Department of Corrections (DOC)

MAR 2018 Issue No. 16 (August 24, 2018)

The DOC issued a NOTICE OF ADOPTION regarding a new rule pertaining to facilities exempt from geographical restrictions applicable to high-risk sex offenders. The DOC received 12 comments, all from people living in the Glendive, Montana area. All of the commenters were concerned about the WATCH East facility located at 700 Little Street in Glendive being included in the list of facilities where high-risk sexual offenders could be housed. Generally, the commenters were concerned because the facility is located in a residential neighborhood where families live and young children play.

In responding to the comments, the DOC noted that persons convicted of a sexual or violent offense are ineligible for placement at WATCH East pursuant to ARM 20.7.801. The DOC also noted that 45-5-513, MCA, became effective on October 1, 2015, and addressed where certain high-risk sex offenders may live. Section 45-5-513, MCA, required the DOC to adopt rules to which 45-5-513(5), MCA, applies. In other words, the DOC was required to provide rulemaking that lists which facilities could house high-risk sexual offenders.

The DOC in its new rule listed each facility owned by the DOC or contracted with the DOC as of October 15, 2015, including the WATCH East facility in Glendive. Any facility not listed would have to go through a public hearing process before high-risk sexual offenders could be housed in the facility. (45-5-513(5), MCA). Although ARM 20.7.801 currently prohibits the WATCH East facility from accepting high-risk sexual offenders, because the DOC owns the Glendive facility, the DOC stated that it could not "responsibly represent that there will never be a modification of the programming/use of the facility." However, the DOC assured that any modification would only be done "after community hearing(s) and upon determination of public support, all in accordance with procedures established by applicable law and administrative rules."

The DOC issued a NOTICE OF AMENDMENT AND REPEAL related to ARM 20.7.901, 20.7.904, 20.7.907, 20.7.910, 20.7.913, and 20.7.919, and the repeal of 20.7.916 pertaining to residential methamphetamine programs. The rules were amended as proposed and ARM 20.7.916 was repealed. No comments or testimony were received by the DOC.