



**Montana Legislative Services Division**  
**Legal Services Office**

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TO: Law and Justice Interim Committee  
FROM: David S. Niss, Staff Attorney  
RE: No. 3 - Jail Standards  
DATE: June 13, 2008

I  
INTRODUCTION

At its meeting on April 11, 2008, the Law and Justice Interim Committee (Committee) requested information on jail standards. This memorandum reviews jail standards in this and other states, especially as those standards that relate to mental health programs in those jails, especially suicide prevention, and outlines options available to the Committee.

II  
DISCUSSION

a. State jail standards in other jurisdictions

A recent publication of the National Institute of Corrections of the U.S. Department of Justice, entitled "Jail Standards and Inspection Programs: Resource and Implementation Guide"<sup>1</sup> (Guide), a table from which is attached, reveals the following information:

1. Twenty-eight states have state-established mandatory standards for local jails.<sup>2</sup>
2. Thirty-one states have inspection programs.<sup>3</sup>
3. Five states use standards established by the states' sheriffs' association.<sup>4</sup>

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<sup>1</sup>Mark D. Martin, April 2007.

<sup>2</sup>AL, AR, CA, DE, FL, IA, IL, IN, KY, LA, MA, MD, ME, MI, MN, NC, ND, NE, NJ, NY, OH, OK, PA, SC, TN, TX, VA, WI (GA has standards but doesn't enforce them).

<sup>3</sup>AL, AR, CA, DE, FL, IA, ID, IL, IN, KY, LA, MA, MD, ME, MI, MN, NC, ND, NE, NJ, NY, OH, OK, OR, PA, SC, TN, TX, UT, VA, WI.

<sup>4</sup>FL, ID, MT, OR, UT.

4. Seventeen states have no state standards for local jails.<sup>5</sup>

The Guide also shows that of the 28 states that have adopted mandatory standards for local jails, 19 of the states have assigned that responsibility to a state department of corrections (DOC), 3 states have assigned the responsibility to a commission, and the remainder of the states have assigned the responsibility to another state agency other than the state DOC. Of the 28 states that have adopted state standards, the Guide shows that all of them (except Georgia) have some kind of inspection program and that of the 5 states that use the standards of the state sheriffs' association, 4 of those associations conduct annual, biannual, or other state inspection programs for local jails. Of those 28 states that have adopted state standards, most of those are adopted pursuant to statute as administrative regulations. Both the statutes requiring regulations and the regulations themselves vary in the amount of detail they contain. The regulations typically address such subjects as physical/construction standards, security, prisoner mail, telephone calls, visitors, etc. The regulations also vary in how much detail they contain concerning inmate health issues. Some require very express suicide prevention protocols (see below). Of those states that have adopted standards, the Guide says, "Jails in states with proactive standards and inspection programs have generally experienced reduced liability exposure, improved conditions, greater professionalism, and greater consistency in operations."<sup>6</sup>

A common feature applicable to virtually all of the regulations, or the statutes pursuant to which the regulations are adopted, is that the standards are to be used for administrative purposes (like jail inspections) only and do not grant any substantive legal rights to inmates or others. Committee staff recommends such a provision in any legislative provision for standards. An example is section 356.36 of the Iowa Code, which provides:

**356.36 Jail standards.** The Iowa department of corrections, in consultation with the Iowa sheriff's association, the Iowa association of chiefs of police and peace officers, the Iowa league of cities, and the Iowa board of supervisors association, shall draw up minimum standards for the regulation of jails, alternative jails, facilities established pursuant to chapter 356A and municipal holding facilities. When completed by the department, the standards shall be adopted as rules pursuant to chapter 17A.

The sole remedy for violation of a rule adopted pursuant to this section

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<sup>5</sup>AK, AZ, CO, CT, HI, KS, MO, MS, NH, NM, NV, RI, SD, VT, WA, WV, WY. It should be kept in mind that these states have no state standards. Any of these states may still rely upon voluntary standards used by private associations for voluntary accreditation purposes (see text, part IIb) or to follow as informal guides.

<sup>6</sup>Jail Standards and Inspection Programs: Resource and Implementation Guide, National Institute of Corrections, U.S. Department of Justice, p. ix.

is by a proceeding for compliance initiated by request to the Iowa department of corrections. A violation of a rule does not permit any civil action to recover damages against the state of Iowa, its departments, agents, or employees or any county, its agents or employees, or any city, its agents or employees.

In some states, the state standards adopt the private, voluntary standards of the American Correctional Association (ACA) or the National Commission on Correctional Health Care (NCCHC).<sup>7</sup>

b. Private accreditation standards

The two principal private accrediting organizations for health care standards in prisons and local jails are the American Correctional Association (ACA) and the National Commission on Correctional Health Care (NCCHC). Both organizations publish standards for mental health care accreditation but the ACA's standards are part of the ACA's health care standards generally and no separate accreditation is available for mental health programs from the ACA.<sup>8</sup> Local jails may either obtain the published standards and use them informally to improve facility programs or may seek formal accreditation by the ACA or the NCCHC. There are many more state and local facilities that use the private association standards for guides than actually are accredited.<sup>9</sup> The process of accreditation involves a written accreditation contract, a self-assessment, and an on-site assessment by a review committee.<sup>10</sup> Accreditation by the ACA lasts 3 years and then application must be again made for accreditation, but accreditation by the NCCHC is renewed from year to year based upon the payment of an annual fee and submission of certain data.<sup>11</sup> No correctional health care programs in Montana are accredited by either the ACA or NCCHC. Of the nearly 500 facilities accredited by NCCHC, the smallest facility has 20 beds and the largest over 12,000.

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<sup>7</sup>Telephone conversation with Mr. Tom Reid, Correctional Specialist, National Institute of Corrections, U.S. Department of Justice, on May 21, 2008 (hereafter "Reid conversation"). Mr. Reid was previously employed as an ACA compliance auditor.

<sup>8</sup>Telephone conversation with Mr. Mark Flowers, Director of Standards and Accreditation for the American Correctional Association (ACA), on May 20, 2008 (hereafter Flowers conversation), and telephone conversation with Dr. R. Scott Chavez, Vice President of the National Commission on Correctional Health Care (NCCHC), on June 4, 2008 (hereafter Chavez conversation).

<sup>9</sup>Reid conversation.

<sup>10</sup>Reid conversation.

<sup>11</sup>Flowers conversation and Chavez conversation.

The ACA will accredit either an entire facility or the facility's health care (including mental health) program. The NCCHC publishes standards applicable only to mental health services (information attached from NCCHC website). This stand-alone mental health accreditation program begins in July of this year. The new stand-alone mental health accreditation program will use the standards contained in a new NCCHC publication, Standards for Mental Health Services in Correctional Facilities, which is not yet available. The ACA has no such stand-alone mental health program accreditation.

c. Jail mental health and suicide prevention standards in other jurisdictions

Iowa's administrative regulations governing prevention of suicides in Iowa jails, adopted pursuant to the Iowa Administrative Procedure Act into the Iowa Administrative Code (similar to the Administrative Rules of Montana), are interesting because of the detail in the standards regarding suicide prevention in Iowa jails. Section 201-50.13(1)f of the Iowa Administrative Code provides:

All staff involved in the booking process or the supervision of prisoners shall be trained in suicide prevention. At the time of booking, an attempt shall be made (either by the observation for marks or scars or direct questioning of the prisoner) to determine if the prisoner is suicidal. The following questions, or others of equal meaning, shall be incorporated into the booking process with appropriate documentation to aid in suicide prevention:

- (1) Does the prisoner show signs of depression?
- (2) Does the prisoner appear overly anxious, afraid, or angry?
- (3) Does the prisoner appear unusually embarrassed or ashamed?
- (4) Is the prisoner acting or talking in a strange manner?
- (5) Does the prisoner appear to be under the influence of alcohol or drugs?
- (6) Does the prisoner have any scars or marks which indicate a previous suicide attempt?

In all cases, the following questions will be asked of the prisoner:

Have you ever tried to hurt yourself?

Have you ever attempted to kill yourself?

Are you thinking about hurting yourself?

\* \* \*

Further, section 201-50.15(6)c provides:

As part of the admission procedure, a medical history intake form shall be completed for each person admitted to the jail. The intake procedure shall include screening for potential self-injury or potential suicide. Jail staff with actual knowledge that there is a substantial risk that a prisoner intends to commit suicide shall take reasonable measures to abate that risk. The jail shall have a written suicide prevention plan. Essential elements of the plan shall include

training to recognize the potential for suicide, communication between staff, appropriate housing and intervention procedures.

d. History of jail standards in Montana

Montana has had a long history of attempting to adopt some form of jail standards generally, not just for the purposes of addressing mental health or suicide issues. A 1998 Montana interim committee conducted a study, pursuant to HJR 19, of applying jail standards to county jails.<sup>12</sup> The interim committee's final report stated:

Correctional standards, specifically jail standards, have been recommended numerous times in recent history. A 1971 Jail Survey report, published by The Governor's Crime Control Commission in 1972, stated that little or nothing had been done to upgrade most detention facilities since their original construction. At that time, there were 53 county and 21 municipal jail facilities. Thirty-four of 50 county jails were built prior to 1920, and only two were built between 1966 and 1971. The jails were inspected, and a majority were judged to be in fair to poor condition. A recommendation was made for the state planning staff to set minimum standards in the four areas of construction, maintenance, physical condition of the jail, and treatment of prisoners. The staff recommendations were to be reviewed by a Corrections Task Force and approved by the Governor's Crime Control Commission and submitted to the Legislature. The recommendation included a recommendation for a state jail inspector.

In 1975, 1977, 1983, 1985, 1989, and 1991, legislation for jail standards commissions or inspection programs was introduced and rejected by the Montana Legislature. Legislation in two of those years, HB 787 in 1983 and HB 905 in 1985, would have created a jail standards commission. In 1981, standards for juvenile detention were introduced in and rejected by the Legislature. Of the more recent attempts, House Bill No. 282 was introduced in the 1989 Legislative Session and would have established state jail standards for Montana. The bill passed through the House on second reading but was referred to the House Appropriations Committee, which reported a Do Not Pass recommendation that was endorsed 50-42 by the House of Representatives.

A 1990 Jail Survey conducted under the auspices of the Joint Interim Subcommittee on Adult and Juvenile Detention indicated that there were 36 county jails, 9 county, 72-hour lockups, and 2 city, 72-hour lockups for a total of 47 jails. Slightly under half of the jails surveyed were rated as poor or fair for overall jail conditions. Of all those surveyed, only one jail (2%) was reported to meet current, accepted jail standards, 38% indicated that the jail substantially meets current standards, 60% did not meet standards or did not know whether their jail met any standards. A June 1990 Legislative Council report on

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A copy of the Committee's detailed report is available in LSD staff offices.

"Adult and Juvenile Detention: Issues and Options" identified an option to establish jail standards and require regular inspection of local jails. It noted that standards could be directly established by statute or adopted through administrative rules and the option recommended annual inspections. HB 70, drafted for an interim committee, was introduced in the 1991 session and would also have established state jail standards. The bill was tabled in the House Appropriations Committee.

e. The most recent attempt - HB 185 in 1999.

As the 1999 interim study committee report quoted above shows, the most recent attempt to adopt a mechanism for jail standards occurred in 1999. The legislation sponsored by the study committee, HB 185, was the result of the Committee's cooperation on a task force with the Montana Sheriffs and Peace Officers Association (MSPOA) and resulted in the introduction of HB 185 by Representative Menahan. The bill required the Montana Department of Public Health and Human Services to adopt minimum life, health, and safety standards and delegated to the Montana Board of Crime Control (MBCC) the authority to adopt rules for the inspections of jails for compliance with those standards. A \$200,000 appropriation to the MBCC for the inspection program was removed by the House Appropriation Committee before final approval. Governor Racicot returned the bill to the Legislature to make the inspection program contingent upon an appropriation in the Governor's budget, which was never made, and the bill was approved and signed with that contingency included. Because the contingency (an appropriation) never occurred, the act never became effective. A copy of HB 185 (Chapter 508, Laws of 1999), and its fiscal note, are attached.

f. Current Montana standards regarding health and safety

The only standards for the health and safety of county prisoners appears in 7-32-2222, MCA, which provides:

**7-32-2222. Health and safety of inmates.** (1) Each detention center shall comply with state and local fire codes for correctional occupancy and with sanitation, safety, and health codes.

(2) Designated exits must permit prompt evacuation of inmates and detention center staff in an emergency.

(3) When there is good reason to believe that the inmates may be injured or endangered, the detention center administrator shall remove them to a safe and convenient place and confine them there as long as necessary to avoid the danger.

g. Options available to the Committee

1. Allow voluntary use of standards, such as MSPOA, ACA, or NCCHC standards, as guides for facility programs or voluntary accreditation.<sup>13</sup>
2. Require some or all jails to seek, obtain, and maintain accreditation by a private association with its standards (or some portion of those standards, such as the new 2008 program of the NCCHC, whereby certification may be sought only for detention mental health care).
3. Provide for and require compliance with state-adopted standards for all or some aspects of mental health programs for all or some jails.

III  
CONCLUSION

The Montana Legislature has a 24-year history of attempting to adopt some kind of jail standards, beginning in 1975 and ending with the last effort in the 1999 legislative session. Twenty-eight states have adopted their own standards and five states currently rely on the state sheriffs' association for standards. It's likely that some of the jails in other states that either have no state-adopted standards or comply with state standards are accredited by either the ACA or the NCCHC. The Montana Legislature could allow use of voluntary private association standards or require that all or part of those standards, such as standards for suicide prevention, or specially adopted state standards, apply to some or all of Montana jails.

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<sup>13</sup>No action needs to be taken by the Legislature to implement this option.

### **No. 3 - Jail Standards Executive Bullets**

- \* A 2007 publication by the National Institute of Corrections lists 28 states as having state-established mandatory standards for local jails, 5 states as using standards established by a sheriffs association, and 17 states as having no mandatory jail standards.
- \* Some states, such as Iowa, provide detailed regulation of local jails, through administrative rules, in order to prevent suicides.
- \* According to a report by the Legislative Services Division, legislation regarding jail standards has been introduced in six prior legislative sessions. There was also a bill for standards and inspections (to be done by the Board of Crime Control) in the 1999 legislative session. The 1999 bill was passed and signed, but subject to an appropriation contingency.
- \* Both the ACA and NCCHC operate health care accreditation programs but the NCCHC is the only accrediting organization providing accreditation for only mental health care programs.
- \* Three options available to the Committee are to continue to allow the use of voluntary standards (including accreditation standards), require compliance with accreditation standards, or adopt state standards, in all or some counties, regarding all aspects of mental health programs, or only some part of those programs, such as suicide prevention.