OFFICE OF THE GOVERNOR
STATE OF MONTANA

STEVE BULLOCK
GOVERNOR

MIKE COONEY
LT. GOVERNOR

TO: Montanans; all officers and agencies of the State of Montana
FROM: Governor Steve Bullock
DATE: April 1, 2020
RE: Directive implementing Executive Orders 2-2020 and 3-2020 related to state correctional and state-contracted correctional facilities

Executive Orders 2-2020 and 3-2020 declare that a state of emergency exists in Montana due to the global outbreak of COVID-19 Novel Coronavirus.

Section 10-3-104(2)(a), MCA, authorizes the Governor, during a state of emergency, to "suspend the provisions of any regulatory statute prescribing the procedures for conduct of state business or orders or rules of any state agency if the strict compliance with the provisions of any statute, order, or rule would in any way prevent, hinder, or delay necessary action in coping with the emergency or disaster." Further, it authorizes the Governor to "control ingress and egress to and from an incident or emergency or disaster area, the movement of persons within the area, and the occupancy of premises within the area." Section 10-3-104(2)(c), MCA. "[A]ll officers and agencies shall cooperate with and extend their services and facilities to the governor as the governor may request in the carrying out of the purposes of parts 1 through 4 of this chapter." Section 10-3-305, MCA.

Montana's public health laws also authorize the Department of Public Health and Human Services (DPHHS), acting under the Governor's direction, to "issue written orders for correction" of "conditions of public health importance," to "prevent and mitigate conditions of public health importance" through measures including "isolation and quarantine" and "abatement of public health nuisances." Section 50-1-202, MCA. DPHHS, under the Governor's direction, may also take action to correct public health deficiencies in "buildings or facilities where people congregate." Section 50-1-203, MCA. *See also*, § 50-1-204, MCA (isolation and quarantine measures authorized).

The Centers for Disease Control and Prevention (CDC) has issued an interim guidance for correctional and detention facilities.[1] While observing that it "may need to be adapted based on individual facilities' physical space, staffing, population, operations, and other resources and conditions," the interim guidance recommends, among other things, that correctional and detention facilities limit the transportation of inmates to and from facilities unless necessary; screen incoming inmates; practice hygiene, cleaning, disinfecting, and social distancing practices to the greatest extent possible; limit contact visitation; and modify programming to accommodate social distancing and limit crowding.

To curtail the spread of the COVID-19 pandemic in Montana, it is necessary to implement measures to prevent the spread of disease in correctional facilities. Such an approach will provide increased safety to inmates and staff during this pandemic. In consultation with public health experts, corrections professionals, and emergency management professionals, and consistent with CDC Interim Guidance on Management of Coronavirus Disease in Correctional and Detention Facilities, I have determined that to protect public health and human safety it is necessary for correctional facilities to implement

[1] *See* https://www.cdc.gov/coronavirus/2019-ncov/downloads/guidance-correctional-detention.pdf.

operational preparedness, prevention and management practices to address COVID-19, including restrictions on inmate movement. I also find that to the extent existing statutes and rules conflict with these objectives, strict compliance with those statutes and rules, as outlined below, would prevent, hinder, or delay necessary action in coping with the emergency.

Therefore, in accordance with the authority vested in me under the Constitution, Article VI, Sections 4 and 13, and the laws of the State of Montana, Title 10, Chapter 3 and Title 50, Chapter 1, MCA, and other applicable provisions of the Constitution and Montana law, I hereby direct the following measures be in place in the State of Montana effective immediately, except where otherwise specified:

I. Protocols to Protect State Inmate Population and Facilities Staff

- The Montana Department of Corrections (DOC) shall implement risk reduction protocols to address COVID-19 at its state-operated or state-contracted facilities, including the following:

    - Screening all persons arriving at a facility in a manner consistent with CDC guidelines.

    - Restricting all in-person visitations and continuing to provide, to the greatest extent possible, access to non-contact visitation methods. DOC shall continue offering one free video visit and one free phone call for each inmate per week for the duration of in-person visitation restrictions. DOC shall continue providing unmonitored call lines for legal communications and encouraging attorneys to limit in-person visits to essential visits only.

    - Restricting off-site appointments for incarcerated individuals to those necessary to address an inmate's urgent or serious medical needs.

    - Providing support to the Board of Pardons and Parole to consider early release for all of the following, but only so long as they do not pose a public safety risk and can have their medical and supervision needs adequately met in the community:
        - Inmates aged 65 or older;
        - Inmates with medical conditions that place them at high risk during this pandemic or who are otherwise medically frail;
        - Pregnant inmates; or
        - Inmates nearing their release date.

    - Temporarily suspending all transfers into the DOC's custody except as authorized herein.
        - All transfers into the DOC's custody under this Directive shall be quarantined for a period of 14 days on arrival into DOC custody.
        - Before an in-state transfer, a county jail or other originating facility may request that the Director of the DOC determine that the jail or originating facility has satisfactorily implemented risk reduction protocols as outlined above. If the Director determines that risk reduction protocols were satisfactorily implemented, transfers will resume in accordance with this Directive but are still subject to the 14-day quarantine requirement.
        - Counties will continue to be reimbursed under existing reimbursement rates and protocols for these inmates. The statutory requirement to maintain county jail holds at a monthly average of 250 or less is suspended for this purpose only.

- Out-of-state transfers are only permitted on the express approval of the Director, are to be limited to the most pressing or severe cases, and must follow the 14-day quarantine requirement.
- The Director may suspend all transfers into DOC custody if capacity limitations prevent the ability to quarantine transfers.

- Urging local detention facilities to adopt appropriate screening and operational protocol as contained herein to prevent the introduction or spread of COVID-19 within their facilities and throughout the system.

- Implementing protocols for incarcerated persons who display symptoms of COVID-19, including appropriate testing and isolation protocols. DOC shall continue to work closely with DPHHS on these protocols.

- Providing, to the extent possible, appropriate personal protective equipment to staff as recommended by the CDC.

- Conducting necessary cleaning and disinfecting of facility surface areas.

- Ensuring access to personal hygiene products for incarcerated persons and correctional staff, including soap and water sufficient for regular handwashing. DOC will continue to educate staff and inmates on social distancing, handwashing, and personal hygiene.

- Offering educational and other programming to the greatest extent possible, while practicing social distancing protocol.

- Minimizing crowding, which may include scheduling additional mealtimes and recreational times, as staffing allows, to provide for increased social distancing.

- Nothing in this Directive shall abridge the rights of victims of crime to be notified of or participate in release decisions.

II. Protocols to Protect State Community Supervision Population and Supervising Staff

- The Montana Department of Corrections (DOC) shall implement risk reduction protocols to address COVID-19 risks to offenders on community supervision and the probation and parole officers who supervise them.

- Conditions of supervision remain in full effect and offenders are required to comply with those conditions.

- To the greatest extent possible, DOC shall reduce in-person contact to only those instances where public safety requires it and conduct other routine contacts via telephone or other means.
- Pre-Sentence Investigation interviews and risk and needs assessments shall be conducted telephonically.
- Statutory restrictions on the use of supervision fees to facilitate the purchase of the necessary equipment to further enable remote supervision are suspended for the limited purpose of accomplishing this Directive.

- Where public safety requires physical contact with an individual on community supervision, DOC staff shall practice social distancing and hygiene, and use adequate PPE to the extent possible.

- It is imperative for public safety that those re-entering communities from facilities obtain appropriate, adequate housing during this time where supportive social services are limited. Therefore, any statutory restrictions, as promulgated in ARM 20.13.108, on rental voucher funds are hereby suspended so as to allow additional discretion for these funds to be utilized for any housing-related expense, to ensure adequate re-entry housing.

Authorities: Sections 10-3-103, -104, -302, and -305, MCA; §§ 50-1-103, -202, -203, and -204, MCA; Executive Orders 2-2020 and 3-2020; Montana Constitution, Art. VI, Sections 4 and 13; and all other applicable provisions of state and federal law.

Limitations

- This Directive is effective immediately and expires at the end of the declared state of emergency in Executive Orders 2-2020 and 3-2020, except where otherwise specified.
- This Directive shall be implemented consistent with applicable law and subject to the availability of appropriations.
- Nothing in this Directive shall be construed to limit, modify, or otherwise affect the authority granted by law to the Governor, DOC or the Board of Pardons and Parole, any other department, agency, officer, agent, or employee of the State of Montana, or any local or municipal government except as expressly provided in this Directive or other Directives now in effect implementing Executive Orders 2-2020 and 3-2020.
- This Directive is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the State of Montana, its departments, agencies, or entities, its officers, employees, or agents, or any other person.