

BEFORE THE DEPARTMENT OF CORRECTIONS  
OF THE STATE OF MONTANA

In the matter of the amendment of	)	NOTICE OF PUBLIC HEARING ON
ARM 20.7.501, 20.7.502, 20.7.503,	)	PROPOSED AMENDMENT AND
20.7.509, 20.7.510, 20.7.511, and	)	REPEAL
20.7.512 and the repeal of ARM	)	
20.7.504, 20.7.505, 20.7.506, and	)	
20.7.507 concerning the siting,	)	
establishment, and expansion of	)	
prerelease centers	)	

TO: All Concerned Persons

1. On May 29, 2024, at 10:00 a.m., the Department of Corrections will hold a public hearing via remote conferencing to consider the proposed amendment and repeal of the above-stated rules. Interested parties may access the remote conferencing platform in the following ways:

(a) Join via Microsoft Teams:

Meeting ID: 249 436 760 182  
Passcode: inmoXN

(b) Telephone:

(406)-318-5487  
Passcode: 503176088#

(c) Join on a video conferencing device:

Tenant key: 291818717@t.plcm.vc  
Video ID: 112 205 591 2

2. The Department of Corrections will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Corrections no later than May 15, 2024, to advise us of the nature of the accommodation that you need. Please contact Pamela Lammey, Department of Corrections, 5 South Last Chance Gulch, Helena, Montana, 59601; telephone (406) 444-9819; or e-mail Pamela.Lammey@mt.gov.

3. The rules as proposed to be amended provide as follows, new matter underlined, deleted matter interlined:

20.7.501 DEFINITIONS For purposes of this chapter, the following definitions apply:

- (1) ~~"Center" means prerelease center.~~
- (2) ~~(1) "Department" means the Department of Corrections.~~
- (3) ~~"Expansion of existing center" means an existing pre-release center intends to go beyond its contracted bed capacity or add square footage for the purpose of housing offenders.~~
- (4) ~~"Local officials" means elected and appointed city, town, and county persons in leadership positions.~~
- (5) (2) "Prerelease center" means a residential facility for adult offenders located in a community which offers offenders room and board, supervision, counseling, and treatment.

AUTH: 53-1-203, MCA

IMP: 53-1-203, MCA

20.7.502 DETERMINATION OF NEED (1) Before proceeding with plans to establish a prerelease center, the department shall must make a preliminary written determination that there is a need for a prerelease center in the city, town, or county jurisdiction being considered. ~~The department shall develop a written rationale which documents the need for a center.~~ The written rationale determination of need must include:

- (a) demographic and statistical data on the general and offender population of the city, town, or county being considered jurisdiction; and
- (b) the proposed prerelease center's relationship to the correctional needs of the state.

(2) The determination of need must be published on the department's website.

AUTH: 53-1-203, MCA

IMP: 53-1-203, MCA

20.7.503 DETERMINATION OF MINIMUM REQUIREMENTS (1) The department shall must determine that within the city, town, or county jurisdiction being considered, there are available to the offenders:

- (a) appropriate mental health and chemical dependency substance abuse treatment disorder services;
- (b) adequate job opportunities ~~as determined by appropriate state agencies~~;
- (c) opportunities for basic education, GED high school equivalency education, technical training, and post secondary education; and
- (d) opportunities for volunteer and community service.

AUTH: 53-1-203, MCA

IMP: 53-1-203, MCA

20.7.509 PUBLIC HEARING DETERMINATION OF PUBLIC SUPPORT

(1) ~~The working committee, with the assistance of local officials and~~ After the department has selected a proposed location for a new prelease center the

department must determine that there is community support for a prerelease center to be located in that location.

(2) The mechanism for determining community support is as follows:

(a) The department, shall must conduct a public hearing held in conformity with Title 2, chapter 3, MCA.

(2)(i) The department shall must publish notice of the hearing on its website and in a newspaper of general circulation within the proposed specific geographic area jurisdiction reasonably in advance at least five business days prior to the date of the hearing.

(ii) The department shall must also ~~mail notice~~ provide notice of the hearing to all interested persons who have expressed to the department an interest concerning department actions and have requested to be placed on the department's list of interested persons. Interested persons can be notified either by emailing or mailing the notice to the interested person. If the hearing notice is mailed, it must be mailed, by regular mail, at least ten business days prior to the date of the hearing. If notice is e-mailed, it must be sent at least five business days prior to the date of the hearing.

(3) (iii) The department shall must allow interested persons the opportunity comments to be submitted submit data, views, or arguments orally or in writing prior to the hearing, at the hearing, and for a reasonable time ten business days after the hearing.

(4) (iv) The hearing must be held in an accessible facility in the specific geographic area jurisdiction in which the proposed for the prerelease center will be located.

(3) Before a prerelease center can be sited, the governing body of the jurisdiction in which the prelease center will be located must, after conducting its own public hearing, pass a resolution in support of siting a prerelease center at the location selected by the department.

AUTH: 53-1-203, MCA

IMP: 53-1-203, MCA

20.7.510 REQUEST FOR PROPOSALS (1) After the working committee has approved a specific geographic area of the city, town, or county for the center and the department has shown through surveys that the area has the support of local officials and the public, After the department has held a public hearing and obtained a resolution of support from the governing jurisdiction, the department shall request proposals from vendors to construct or acquire a building and operate the center within the boundaries identified for the specific geographic area. must issue a request for proposals using a competitive process and follow the applicable contract and procurement procedures in Title 18, MCA.

(2) The department shall choose the best proposal consistent with the criteria developed by the department.

(3) Proposers shall submit proposals based on a specific site within the geographic area which the working committee selected and the public approved.

(2) The department does not have to request proposals for operation of a prerelease center when the department intends to operate the prerelease center.

AUTH: 53-1-203, MCA  
IMP: 53-1-203, MCA

20.7.511 EXPANSION OF INCREASE IN CONTRACT CAPACITY FOR AN EXISTING PRERELEASE CENTER (1) The department of ~~Corrections~~ may biennially increase the department contract capacity for a prerelease center by not more than 25 percent over the previous biennial contract capacity without engaging in the competitive procurement process.

(2) The department may biennially increase the contract capacity by more than 25 percent but less than 50 percent over the previous biennial contract capacity without engaging in the competitive procurement process if:

(a) the department has determined, in writing, that the increase is in the best interest of the department;

(b) the increase does not change the nature of the prerelease services; and

(c) the current contract has at least twelve months remaining, including renewals, before expiration.

(3) Before the department executes a contract amendment for an expansion increase in contract capacity of more than 25 percent but less than 50 percent, the department must give notice to the public and to current treatment facility or program providers of its intent to ~~expand~~ increase the existing prerelease contract capacity.

(a) The department must publish the notice on its website and mail or email the notice to each existing department prerelease center or program provider not less than 90 days in advance of the proposed ~~expansion~~ increase date.

(b) The notice must request potential contractors to notify the department, in writing, of their interest in providing the same services within a reasonable period of time as specified in the notice.

(c) The notice must request potential contractors to provide proof to the department that the potential contractor has the ability to provide the contracted services.

~~(d) Notice is considered accomplished under this subsection if the department publishes the notice on its web site and sends such notice to each existing department prerelease facility or program provider.~~

~~(e) The department shall set a reasonable deadline for potential contractors to notify the department.~~

(f) (d) If the department receives appropriate notification under this subsection rule, the department may not proceed without opening up the expansion increase to competitive bidding and following the applicable contract and procurement procedures in Title 18, MCA, for the expansion increased capacity portion only.

(4) The department may not increase contract capacity by more than 50 percent the department contract capacity for a prerelease program without engaging in the competitive bidding process and following the applicable contract and procurement procedures in Title 18, MCA, for the expansion increased capacity portion.

(5) For an expansion increase of the contract capacity of more than 25 percent, the department ~~shall~~ must conduct a public hearing as provided for in ARM

~~20.7.509(1) and(2). in the neighborhood in which the center is situated. The department shall conduct the hearing in conformity with Title 2, chapter 3, MCA.~~

~~(a) The department shall publish notice of the hearing in a newspaper of general circulation within the city, town, or county reasonably in advance of the hearing. The department shall also mail notice of the hearing to all interested persons who have expressed to the department an interest concerning department actions and have requested to be placed on the department's list of interested persons.~~

~~(b) The department shall allow interested persons the opportunity to submit data, views, or arguments orally or in writing prior to the hearing, at the hearing, and for a reasonable time after the hearing.~~

~~(c) The hearing must be held in an accessible facility in the neighborhood in which the center is situated.~~

~~(d) A prelease center expansion is subject to any existing conditions, covenants, restrictions of record, and zoning regulations.~~

~~(6) This rule does not apply to expansion increase of department contract capacity for a contract between the department and a local or tribal government for operation of a prerelease program established pursuant to the Community Corrections Act, 53-30-301, MCA et seq.~~

~~(7) An existing prerelease center that proposes to move locations within the same jurisdiction does not have to be re-sited pursuant to this subchapter. Any move that will result in a proposed increase in contract capacity must comply with the capacity increase provisions in this rule.~~

~~(8) Prior to any existing prerelease center moving locations within the same jurisdiction, the department must approve of the move and conduct a public hearing as provided for in ARM 20.7.509(1) and (2).~~

AUTH: 53-1-203, MCA

IMP: 53-1-203, MCA

#### 20.7.512 DETERMINING A LOCATION SPECIFIC GEOGRAPHIC AREA

~~(1) The committee must select a proposed area with specific identifiable boundaries that it deems suitable for a prerelease center. The proposed area the committee identifies must have access to The prerelease center must be located in an area that has access to:~~

~~(a) a law enforcement agency capable of emergency response within 15 minutes;~~

~~(b) 24-hour emergency medical and fire protection services;~~

~~(c) medical transportation services from a licensed ambulance service; and~~

~~(d) fire protection by a professional fire protection service capable of responding within a reasonable time as determined by the state fire marshal or the authority having jurisdiction.~~

~~(2) The committee shall involve local organizations such as service groups and local government advisory boards to assist the committee to select a specific geographic area for the center.~~

~~(3) (2) The specific geographic area within the city, town, or county which the committee chooses The selected location must be in compliance with all applicable~~

laws, codes, ordinances and existing conditions, covenants, restrictions of record, zoning regulations, or be capable of coming into compliance with applicable zoning regulation through the use of a zoning change, variance, conditional use permit, PUD planned unit development, or other process set forth in the governing zoning regulations.

~~(4) After the working committee has selected the proposed geographic area, the department shall contract with a professional consulting firm to conduct a comprehensive, statistically valid, and nonbiased survey to determine if the area has an appropriate level of support of local officials, the public who live within the geographic area, and the businesses that are located within the geographic area.~~

~~(a) To determine support of local officials, the consulting firm shall survey the following local officials:~~

~~(i) members of city, town, or county governing bodies;~~

~~(ii) city, town, or county attorney;~~

~~(iii) chief public defender, if there is one;~~

~~(iv) mayor or chief executive officer of city or town;~~

~~(v) local district judges;~~

~~(vi) local state legislators who represent any portion of the city, town, or county of the proposed geographic area;~~

~~(vii) sheriff; and~~

~~(viii) if there is one, the chief of police.~~

~~(b) To determine support of the public, the consulting firm shall survey a statistically valid random sampling of persons who live in the area and persons who own businesses within the geographic area.~~

~~(5) The working committee shall approve both surveys.~~

~~(6) An appropriate level of support is at least 51 percent of local officials and 60 percent of the public and business owners surveyed.~~

~~(7) If the geographic area the committee selects does not garner the appropriate amount of support in the survey, the committee may select another area and proceed with the process indicated in (1) through (5) of this rule.~~

~~(8) The department may not move forward and publish a request for proposals until the working committee has selected a specific geographic area and the department can show through the survey in (3) and (4) of this rule that the area has the support of local officials and the public.~~

AUTH: 53-1-203, MCA

IMP: 53-1-203, MCA

REASON: The department proposes to amend these rules to align with existing law, eliminate redundancies, and provide greater clarity for the siting, establishment, and expansion of prerelease centers. Many of the existing rules were promulgated prior to the 2011 amendments to 53-1-203, MCA. The amendments to the rule regarding determination of public support includes requirements for notice to the public and media, a public hearing, and local government support. The amendments to the rule regarding expansion of existing prerelease centers removes duplicative language regarding the public process. That rule is also amended to reflect that it concerns increases in contract capacity. Amendments to the geographic area rule remove

unnecessary references to the process for determination of public support, which is covered by other rules.

4. The department proposes to repeal the following rules:

20.7.504 OBTAINING SUPPORT OF LOCAL OFFICIALS FOR A PROPOSED PRERELEASE CENTER

AUTH: 53-1-203, MCA  
IMP: 53-1-203, MCA

20.7.505 NOTIFICATION OF MEDIA

AUTH: 53-1-203, MCA  
IMP: 53-1-203, MCA

20.7.506 WORKING COMMITTEE

AUTH: 53-1-203, MCA  
IMP: 53-1-203, MCA

20.7.507 PUBLIC INVOLVEMENT PROCESS

AUTH: 53-1-203, MCA  
IMP: 53-1-203, MCA

REASON: The proposed amended rule regarding determination of public support contains the mechanisms to determine public support, notice to the media and public, the public hearing process, and a requirement of local governing body support. As a result, the rules proposed for repeal are redundant and unnecessary.

5. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Pamela Lammey, Department of Corrections, 5 South Last Chance Gulch, Helena, Montana, 59601; telephone (406) 444-3930; or e-mail Pamela.Lammey@mt.gov, and must be received no later than 5:00 p.m., May 29, 2024.

6. The Legal Unit of the Department of Corrections has been designated to preside over and conduct this hearing.

7. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless

a mailing preference is noted in the request. Written requests may be mailed or delivered to the contact person in 5 above.

8. An electronic copy of this proposal notice is available through the Secretary of State's web site at <http://sosmt.gov/ARM/Register>.

9. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

10. With regard to the requirements of 2-4-111, MCA, the department has determined that the amendment and repeal of the above-referenced rules will not significantly and directly impact small businesses.

/s/ Andres Haladay  
Andres Haladay  
Rule Reviewer

/s/ Brian Gootkin  
Brian Gootkin  
Director  
Department of Corrections

Certified to the Secretary of State April 18, 2024.