

Locked in the Past

MONTANA'S JAILS IN CRISIS

The American Civil
Liberties Union of Montana



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EXECUTIVE SUMMARY

Despite heralding itself as a champion of freedom and human liberty, the United States has the second highest incarceration rate in the world, taking second only to the African nation of Seychelles.¹ Of the incarcerated, statistics suggest that as many as 38% are being held in county detention centers and many of those inmates are held pre-trial. These pre-trial prisoners—an estimated 21.6% of all incarcerated Americans—are detained before guilt is proven in a court of law, weakening the proud American axiom that our citizens are “innocent until proven guilty.”²

Problematically, many county detention centers lack adequate funding and struggle to effectively manage the incarcerated. The impacts these often-deplorable conditions can have on individuals and society as a whole are extremely far reaching. Neglect in county detention centers, coupled with a prevalence of mental illness, leads to a high rate of recidivism, which turns the justice system into a revolving door that is a blight on county, state, and federal budgets.

“Most inmates are just normal people like you and I.”

– Glacier County Detention Center Administrator

Incarceration rates have started to decrease for the first time in decades, albeit at a glacial pace. The reduction of the incarceration rate is largely fueled by the financial realities and burdens of housing an historic number of prisoners at local, state, and federal levels. County detention centers play a unique role in this process in that they often house people on the front-end of the criminal justice system, such as pretrial detention, and can thus be addressed with different measures than state or federal prisons. County detention centers can improve through coercion, such as litigation, or through collaboration between entities with shared goals.

The American Civil Liberties Union of Montana (ACLU) is eager to work with counties to improve detention center conditions, streamline local criminal justice policies, and help make counties more effective at screening, prosecuting, and housing the accused and convicted at local levels. The ACLU of Montana has worked collaboratively with counties throughout the state. For example, the ACLU helped Custer County officials come to grips with their deplorable and antiquated facility by passing a successful bond measure to renovate its facilities. The ACLU is currently working with Lewis & Clark County to assess options for pretrial release and other options for reducing their chronically over crowded facility. The ACLU of Montana is working statewide on substantive criminal justice reform that will allow the courts to respond to the unique needs of the accused on a path to rehabilitation, rather than warehousing them in county detention centers.

The purpose of this report is to provide a comprehensive overview that identifies conditions of confinement in county detention centers throughout Montana and provide recommendations regarding how we might improve those conditions. The study utilized a three-prong methodology, including touring

¹ International Centre for Prison Studies, “Highest to Lowest – Prison Population Rate.” www.prisonstudies.org/highest-to-lowest/prison_population_rate?field_region_taxonomy_tid=All (Accessed January 2015).

² International Centre for Prison Studies, “World Prison Brief: United States of America.” www.prisonstudies.org/country/united-states-america. (Accessed January 2015).

jails, interviewing administrators and prisoners, and sending a mixed-method questionnaire to all jail inmates in the state.³ We identified several overarching trends, including:

- Overuse of solitary confinement for individuals with mental illness
- Inadequate numbers of detention staff
- Lack of access to fresh air
- Lack of access to natural light and exercise
- Inadequate medical and mental health care
- Overcrowding
- Lack of basic necessities such as underwear, socks, and bras
- Unconstitutional prohibitions on visitation from minors and non-family members
- Lack of access to law libraries
- Inadequate or unworkable grievance procedures
- Sub-par physical plant issues

BACKGROUND ON INITIATIVE AND METHODOLOGY

Several factors led the ACLU of Montana to investigate conditions in county detention centers. With over 1,000 county detention center beds in Montana and increasing lengths of stay for pre-trial detainees, the number of complaints the ACLU receives from prisoners in county detention centers has mushroomed. Concurrent with increasingly grave complaints from prisoners, the ACLU has observed an unacceptable level of jail suicides for many years. Rather than re-evaluate the county detention system, reform the broken bond system, and consider addiction and mental health treatment and incarceration alternatives, counties throughout the state are building bigger detention centers. For the most part, county detention issues are “out of sight, out of mind” for the general public, despite the enormous amount of tax revenue spent on incarceration. It follows that detention is often a low priority for elected county commissioners. The lack of any central agency overseeing county detention centers made gathering information very difficult. As such, in 2012, this initiative was launched to gather that information on a county-by-county basis.

This initiative incorporated numerous methodologies to investigate the state of Montana detention centers. All but two counties with detention centers participated in either a phone or face-to-face interview with Anna Conley, former staff attorney for the ACLU of Montana. Conley and other ACLU staff toured 22 of the state’s 36 detention centers. In several detention centers, ACLU staff also conducted interviews with prisoners. Interviews with prisoners and detention centers tours were conducted between June 2012 and August 2014. In addition, ACLU staff mailed questionnaires to a portion of prisoners in all detention centers then housing prisoners⁴ and asked detention staff to treat the

³ More information on the methodology of the study can be found in “Background on Initiative and Methodology” section of this report.

⁴ Questionnaires were not sent to prisoners in Granite & Wheatland Counties because no prisoners were housed there at the time.

responses confidentially. ACLU of Montana collected responses from January 2013 through June 2014. A copy of the questionnaire is attached as [Appendix A](#).

We received 330 responses from prisoners in county detention centers throughout the state. While obvious and reliable trends emerged in responses from prisoners in larger detention centers, in smaller counties interpreting the extremely low number of responses created more ambiguity regarding conditions. In order to have reliable feedback and manageable data, we decided to send questionnaires to all prisoners if the detention population was fewer than 40. If detention population was higher, we sent questionnaires to a maximum of 60 prisoners who had been incarcerated for at least two weeks.

The questionnaire consisted of qualitative and quantitative sections. The qualitative section set forth questions addressing multiple issues in detention centers to which respondents could write in answers describing their experiences. Several prisoners attached supplemental letters describing particular issues. Responses were analyzed and coded into a database to identify trends for various conditions and issues in each detention center. Throughout this report, we set forth quotes from qualitative responses.

The quantitative section of the survey utilized Likert Scale questions regarding conditions issues, using a scale from one to five (one for strongly disagree, two for disagree, three for neutral, four for agree, five for strongly agree). Average responses were determined, and are set forth in the Appendices referenced throughout this report and included at the end of the report. Counties with three or fewer responses were deemed unreliable for reporting purposes because they were less likely to convey detention center-wide trends.⁵

⁵ Choteau, Fallon, Hill, Musselshell, Valley, and Powell Counties were removed from the quantitative analysis due to a lack of responses.

BACKGROUND INFORMATION ON MONTANA COUNTY DETENTION CENTERS

Number of beds

The study focused on 36 county detention centers in the state. We focused on the 36 counties in the state that have a county detention center. The counties that were not focused on either did not have a detention center or only had a 72-hour hold facility. (See [Appendix C.](#)) There are approximately 1,000 county detention center beds throughout Montana, with approximately 300 of those beds designated for female prisoners. Of the 36 centers studied, 27 had 50 beds or fewer, and of those, 11 had 20 or fewer. Five detention centers have between 50 and 100 beds, and four counties have over 100 beds, with Yellowstone County vastly exceeding all other counties with an average of 430 beds.⁶

Nature of offenses

Detention center administrators and county sheriffs reported the vast majority of crimes for which individuals are incarcerated relates to prescription drug and alcohol abuse. Sheriffs and administrators routinely estimated over 90% of the individuals held were charged with addiction-related offenses. Several detention administrators and sheriffs reported a recent marked increase in female prisoners charged with drug-related offenses.

Increasing pre-trial wait times

Detention administrators and sheriffs reported the average length of stay for felony pre-trial detainees was three to nine months. They reported it is common for homicide or multiple felony charges to result in stays over one year. The Dawson County admin reported having one prisoner for over two years, who was still awaiting sentencing. Sheriffs and administrators pointed to over-burdened public defenders and a slow criminal justice process as contributing to long pre-trial stays. In several rural counties, district court judges come through the county only twice a month and public defenders must travel great distances to meet with clients appear in court, which further adds to long pre-trial wait times.

Another factor in many counties was the lack of incarceration alternatives for prisoners. Several sheriffs and administrators voiced frustration with a bond system that requires them to fill beds with people accused of non-violent offenses, simply because they cannot post bond.

Detention administrators uniformly reported increases in the lengths of stay for DOC-sentenced individuals as they await transfer to a DOC facility. They reported that average wait times to move DOC-sentenced people after sentencing increased. Administrators reported wait times for DOC-sentenced females substantially increased. For example, Broadwater County, a 48-bed detention center, almost exclusively houses DOC-sentenced prisoners awaiting placement in a DOC facility. Despite this, Broadwater County's detention center does not comply with some DOC policies, including policies guaranteeing daily outdoor recreation, certain commissary options, and hobby and education guarantees.

The bond system is another cause of long pre-trial lengths of stays. Individuals who are arrested and brought to a jail are either released on their own recognizance or assigned a bail amount by a presiding

⁶ Yellowstone's facility is built for 286 beds. However, overcrowding has resulted in the use of plastic makeshift beds called "boats" and the administrator reported that an average of 430 prisoners are housed daily.

judge. If the prisoner cannot afford to post bail, they are held in custody until their trial, which often takes months, if not a year or more. Our bail system disproportionately affects the indigent, who lack the financial resources to make bail and so remain incarcerated regardless of their innocence or guilt.

72-Hour Hold Facilities

Six rural counties have transitioned their detention centers to 72-hour hold facilities. (See [Appendix C.](#)) Given resource limitations, this report excludes an in-depth analysis of 72-hour facilities.⁷ Counties operating 72-hour hold facilities are obligated to provide constitutional levels of confinement. Given that these facilities are on the “front lines,” they often house arrested individuals experiencing acute medical or mental health episodes. Accordingly, the constitutional right to medical and mental health care is especially applicable in these facilities. In 2014, a prisoner committed suicide in Custer County’s detention facility, which currently operates as a 72-hour hold facility.⁸ By law, these facilities must be adequately staffed and must adequately monitor prisoners to ensure that their medical and mental health needs are met. Detention centers are never an appropriate alternative to a hospital.

Regional Prisons

Three counties in Montana operate regional prisons in their detention centers.⁹ These regional prisons may house already sentenced state inmates as well as county inmates. We do not include the regional prisons in this report, but do include information regarding the county side of the detention center (not the side housing already convicted and sentenced state prisoners) of each of these detention centers. In these regional prisons, the better conditions on the side of the detention center housing state prisoners contrast sharply with the lack of adequate conditions for county pre-trial detainees. In Cascade County, for example, DOC prisoners receive outdoor recreation and access to education and other programming as mandated by DOC policy. On the county side of Cascade County’s Detention Center, prisoners have no outside exercise or recreation and individuals in solitary confinement in two 12-cell blocks do not have access to indoor recreation. Cascade County does not even provide its county prisoners underwear, socks, and bras.

Even though extreme overcrowding exists on the county side of each of these detention centers, the state side may not be used as an overflow area. In Dawson County, DOC sentenced prisoners can access a nice gym and recreation area while pre-trial detainees in the county side of the detention center are not allowed to access the same area under any circumstances. The result is that county pre-trial detainees, who are innocent until and unless proven guilty, but who cannot afford bond, sit in cramped conditions without basic rights such as fresh air, sunlight, socks, or underwear—while in the same building, convicted prisoners enjoy the benefits that DOC policy mandates. These disparities exist despite the ever-increasing length of stay for pre-trial detainees, which regularly lasts for months and has been known to exceed a year.

Tribal Detention Centers

There are seven tribal detention centers in Montana.¹⁰ These are sometimes run by the tribe itself or by the Bureau of Indian Affairs. Consideration of these detention centers is not included in this report.

⁷ Custer, Liberty, Sweet Grass, and Teton County operate 72-hour hold facilities.

⁸ Miles City man dies of apparent suicide in jail, NBC Montana, Jan. 7, 2014, available at <http://www.nbcmontana.com/news/miles-city-man-dies-of-apparent-suicide-in-jail/23813700>

⁹ Missoula, Cascade, and Dawson Counties operate regional prisons.

¹⁰ Rocky Boy Tribal Detention Center, Box Elder; Fort Belknap Tribal Detention Center, Harlem; Fort Peck Tribal Detention Center, Poplar; Crow Tribal Detention Center, Crow Agency; Northern Cheyenne Tribal Detention Center, Lame Deer; Flathead Tribal Detention Center, Pablo; and Blackfeet Adult Detention Center, Browning.

ISSUES IN MONTANA DETENTION CENTERS

This section addresses specific issues related to operations and conditions of Montana detention centers by reviewing the applicable legal standards, setting forth findings based on our investigation, and providing recommendations.

Overview

In many ways, county detention centers bear the brunt of a broken criminal justice system. Many county detention centers in Montana have severe conditions issues and are underfunded, inadequately staffed, and largely ignored by county commissioners, county law enforcement departments, and the public. An inadequately funded statewide public defender system, a broken bond system, a lack of pre-trial alternatives to incarceration, and a backlogged Montana Department of Corrections all mean that more prisoners are staying in county detention centers for longer periods of time. Counties' unwillingness or inability to create and fund jail diversion programs puts the burden on county detention centers to house criminally charged individuals, many of who would be better monitored in less restrictive and less expensive settings. Many prisoners have drug or alcohol addiction issues, mental health issues, medical needs, or developmental disabilities. Counties expect detention centers to be a psychiatric hospital, emergency room, and drug rehabilitation clinic all in one, but do not provide the resources to address any of these issues. The result is an inefficient and ineffective system that is unable to provide the treatment and rehabilitation to stop people from repeatedly cycling through the criminal justice system. Addressing these issues in county detention centers and providing efficient and effective pre-trial alternatives to detention must become a high priority for counties across the state.

Within these detention centers more resources and attention needs to be directed to providing the care prisoners require. For too long, counties have expected detention centers to house marginalized individuals with serious mental illness, addiction issues, and medical needs without giving these detention centers the funding or resources required to provide adequate care. As a result, individuals charged with a crime often languish for months, and even years, in detention centers where they are denied even some of the most basic necessities, such as underwear and sunlight. People with mental and/or medical illnesses often deteriorate in detention centers that do not provide adequate care for their conditions. Many, who rightfully should be in a hospital or clinical setting, are placed in solitary confinement without proper medical oversight or medications for prolonged periods.

County detention centers also bear the brunt of housing people who violate probation and parole conditions and the ever-increasing numbers of people sentenced to Department of Corrections – DOC supervision, which may or may not include time in prison. Many languish in county detention centers awaiting beds in overcrowded DOC facilities. In addition, many DOC parole violations could be avoided with adequate numbers of parole officers managing reasonable numbers of parolees. Reasonable probation and parole caseloads help officers keep certain behaviors from turning into sanctionable violations.

Improving the conditions in county detention centers would not solve the problems of inadequate community services for people with addiction issues or medical or mental illness, inadequate public defender resources, or a broken bond system, but it would go a long way toward ensuring incarcerated individuals in Montana are not subjected to cruel and unusual punishment while awaiting trial and sentencing. It is time to re-focus attention on county detention centers to ensure all counties have the resources and staff they need to provide constitutionally adequate conditions of confinement.

SUICIDE

LEGAL STANDARDS

Preventing prisoner suicide is one of the most important functions of a detention center. Detention centers have an obligation to provide reasonable care to prevent suicide if they know or should know of the prisoner's risk of suicide.¹¹ Further, the detention center is liable for a prisoner's suicide if the detention officer's act or omission constituted the proximate cause of the suicide.¹² Suicidal prisoners should not be kept in perpetual solitary confinement, and should receive access to outside and indoor recreation and natural light, as well as interaction with others. Both the Montana Association of Counties (MACo) and the American Correctional Association (ACA) require that detention centers implement a suicide prevention and intervention program that is approved by the health authority and reviewed by the facility or program administrator.¹³ Adequate programs must include procedures for handling intake, screening, identifying and continually supervising suicide prone prisoners. The standards also require that all supervisory staff must be trained annually on program expectations.

The National Commission on Correctional Health Care ("NCCHC") also requires that detention centers identify suicidal prisoners and intervene appropriately.¹⁴ To comply, detention centers must continuously observe acutely suicidal prisoners and check on non-acutely suicidal prisoners at least every 15 minutes, but at irregular intervals.¹⁵ Staff supervision can never be replaced by prisoner supervision regardless of the circumstances. NCCHC requires prevention and intervention programs approved by the health authority. Suicidal prisoners should be housed in suicide resistant rooms and strategies and services to address the underlying reasons for the suicidal ideation need to be addressed. NCCHC suggests a staff debriefing in the event of a suicide or attempted suicide.

SUICIDE IN MONTANA DETENTION CENTERS

Suicides are pervasive in Montana detention centers compared to other states. The Department of Public Health and Human Services (DPHHS) reported 14 suicides from 2003 to 2007, and the U.S. Department of Justice reported 15 from 2001 to 2005. Based on these statistics, Montana averages three prisoner suicides annually in a state with just 1,000 detention center beds. The Montana Board of Crime Control reported four suicides in 2011 while Karl Rosston, a suicide prevention coordinator employed through DPHHS, reported 23 suicides in detention facilities between 2003 and 2009, which averages to over three a year.¹⁶ According to Rosston, prisoners in large detention centers (those with more than 250 prisoners) were four times more likely than the general population of the state to commit suicide compared to the U.S. average, while prisoners in small detention centers (those with fewer than 50 beds) were over 15 times more likely to commit suicide than the national general population.¹⁷

¹¹ *Pretty on Top v. City of Hardin*, 182 Mont. 311, 317 (1979).

¹² *Id.*

¹³ MACo Standard 11.13 and ACA Standard 1-CORE-4C-13. In Montana, the Department of Health and Human Services has established a suicide prevention program that provides training to local detention centers, free of charge. <http://www.dphhs.mt.gov/amdd/Suicide.aspx>

¹⁴ NCCHC Standard J-G-05.

¹⁵ <http://www.ncchc.org/suicide-prevention>

¹⁶ Karl Rosston, *Suicide Prevention in our Jails*, Montana Public Department of Health & Human Services (last updated May 2011). <http://www.ncchc.org/suicide-prevention>

¹⁷ *Id.*

While the national suicide rate of prisoners in previous years has declined, Montana’s rate has increased more than it has declined.¹⁸ Prisoners reported many factors contributing to suicidal ideation, including inadequate mental health care, inadequate monitoring by staff, lack of outdoor recreation, lack of clothing, loss of dignity, and poor sanitation. More than one respondent described morbid body fluid stains on the floor from a recent suicide in Yellowstone County, which reported two suicides there in the a six month period.¹⁹

The Silver Bow County Detention Center responds to suicidal prisoners in a way that is degrading and can exacerbate their underlying problems. Prisoners in Silver Bow County are often forced to wear suicide smocks while in booking and when being re-classified. A suicide smock is a piece of fabric that covers the front and back of a prisoner but not the sides; prisoners are entirely nude beneath the fabric. The smocks are intended to protect prisoners from themselves when they are suicidal. However, when they are overused they can be extremely degrading and have adverse consequences. These smocks are overused in lieu of treatment. Most of these prisoners need adequate mental health care, rather than a suicide smock or isolation.

“I tried to commit suicide here two times and I’ve been punished both times. I’m in confinement now!”

–Male Prisoner in Gallatin County Detention Center

Six prisoners committed suicide at the Cascade County Detention Center between 2003 and 2011.²⁰ Rather than re-evaluating their suicide plan, detention officials maintained the same practices until February of 2012 when a U.S. Marshal Service prisoner committed suicide in their custody.²¹ In response, the federal government executed an After Action Review of the detention center to determine what went wrong. The published report lambasted Cascade County officials for a number of violations of detention center standards in regard to suicides, including improper housing, supervision, training and planning which, according to the report, ultimately resulted in a prisoner’s suicide.²² Cascade County, which is not accredited by the ACA, was not following Montana Sheriffs and Peace Officers Association (MSPOA) Standards and therefore staff were not checking on prisoners once every hour.²³

In the past, MSPOA operated a voluntary peer-review program that evaluated compliance with suggested suicide prevention protocols.²⁴ However, the program and protocols provided almost no guidance on how to properly screen prisoners and lacked both uniformity between facilities and accountability of non-compliant detention centers.²⁵ For instance, Cascade County, which had not followed the program, had six suicides over a three and a half year period, and faced no repercussions.

¹⁸ Id.

¹⁹ More than one inmate response referenced the two suicides. The questionnaire that referenced the six-month period was received June 7, 2013.

²⁰ Karl Rosston, Suicide Prevention in our Jails, Montana Public Department of Health & Human Services (last updated May 2011); Ryan Hall, Fourth death at Cascade County Detention Center in six months, Great Falls Tribune (May 27, 2011).

²¹ United States Marshal Service, Cascades County Detention Center Great Falls, Montana After Action Review (Suicide) Feb. 5, 2012 (Feb. 29, 2012).

²² Id

²³ Id

²⁴ David S. Niss, 61st MT Legislature Law and Justice Interim Committee, MSPOA Peer Review Program, 10, http://leg.mt.gov/content/Committees/Interim/2009_2010/Law_and_Justice/Meeting_Documents/June2010/PEER%20REVIEW%20VERSION%203.pdf.

²⁵ Id.

Recently, MSPOA and MACo adopted more comprehensive jail standards and now utilize a more extensive network of peer-reviewers to evaluate compliance. MACo and the county detention centers have a shared interest in enforcing the standards because they impact counties' potential tort liability and correlate to insurance premiums that counties pay.

Ravalli County, when faced with three prisoner suicides in two months in 2005 called upon the National Institute of Corrections (NIC) to evaluate their suicide prevention procedures.²⁶ Since adjusting their procedures to adhere with the NIC's suggestions they have not had a single prisoner suicide.²⁷ Ravalli County's success demonstrates that, with prudent adjustments of detention center policy, including proper screening, staff training, and supervision, suicides can be prevented.

RECOMMENDATIONS

- **Implement more effective procedures to screen prisoners** – Prisoners in danger of suicide can be profiled and screened with relative accuracy. Other states require prisoner screening through a regional health center with qualified professionals in order to triage and predict risk for suicide, which, in some states, has resulted in as high as an 80 percent reduction in prisoner suicide.²⁸ Montana should do the same.
- **Adequate training of detention officers** – Ensure detention officers are adequately trained, including Crisis Intervention Training (“CIT”) to more effectively identify prisoners with serious mental illness and who may be at risk of suicide.
- **Implement mandatory statewide policies and procedures with required planning and training and hold detention centers accountable for noncompliance** – Montana needs a statewide mandatory program that requires an independent party to scrutinize written policies and procedures. If detention centers do not comply, there must be consequences.
- **Improve detention center conditions** – Improving overall conditions would be a substantial step in decreasing prisoner suicides. Limiting or eliminating solitary confinement, improving outdated facilities, providing adequate amounts of nutritious food, legitimate grievance procedures, providing adequate mental health care, combating overcrowding, and providing prisoners with consistent access to outdoor and indoor recreation could curb prisoner suicide rates.

SOLITARY CONFINEMENT

LEGAL STANDARDS

Solitary confinement is the confinement of prisoners in cells for 22 to 24 hours a day with minimal sensory stimuli and little to no social interaction. While often discussed as misused and overused in the prison corrections context, solitary confinement is misused and overused in county detention

²⁶ Timothy Mitchell, Inmate suicide epidemic Sheriff Chris Hoffman addresses concerns over three inmate deaths in two months, Ravalli Republic (May 24, 2005).

²⁷ Id.

²⁸ David S. Niss, Montana Law and Justice Interim Committee, No. 4 - Kentucky Jail Mental Health Crisis Network, Issues and Options, http://leg.mt.gov/content/committees/interim/2007_2008/law_justice/meeting_documents/LJIC%20KENTUCKY%20PROGRAM%20MEMO.pdf

centers as well. Solitary confinement is particularly damaging to prisoners with mental illness because it exacerbates existing illnesses.²⁹ As such, courts require that people vulnerable to the negative psychological impacts of isolation be excluded from it.³⁰

Numerous national standards prohibit solitary confinement of people with mental illness, including those of the American Psychiatric Association, the National Commission on Correctional Health Care (NCCHC), the American Bar Association, the U.S. National Alliance on Mental Health (NAMI) and the American Correctional Association (ACA). As explained by the ACA, “Total isolation as punishment for a rule violation is not an acceptable practice.”³¹

NCCHC standards require that the health of all segregated prisoners’ health be monitored by medical staff who must inform jail officials when a prisoner’s physical or psychological health is quickly deteriorating.³² MACo standards require a written policy and procedure governing the management of prisoners housed in administrative segregation, protective custody, and disciplinary detention.³³ Standards mandate segregated housing units provide living conditions that approximate those of the general prisoner population; segregated prisoners must have similar health care services, a minimum of an hour of exercise five days a week, access to mail and legal services, and the ability to converse with and be observed by staff members.

SOLITARY CONFINEMENT IN MONTANA DETENTION CENTERS

Solitary confinement, often for prolonged periods of time, is common in Montana detention centers. In prisons, solitary confinement is usually seen in super-max or maximum security buildings; in Montana detention centers, however, solitary confinement takes many forms. Newer detention centers are commonly built with several blocks of isolation cells. Missoula and Cascade Counties have sizeable isolation blocks, while most other detention centers have anywhere from one to ten isolation cells. Detention centers reported placing many different types of prisoners in these blocks, including individuals going through drug or alcohol detoxification or having acute medical or mental health episodes, transgender prisoners, and young or otherwise vulnerable prisoners. These individuals are often unable to bond out, and may languish in isolation for many months.

One disturbing trend is the lack of any limits on the amount of time individuals can be isolated. We identified no county detention center that caps the number of hours or days an individual can be placed in solitary confinement. As a result, through interviews and questionnaire responses, we identified individuals who had spent over a year in isolation in county detention centers. In interviews, many detention center administrators compared solitary confinement to putting a child in “time out.” Many differences, however, make such a claim inaccurate. Rather than young children being disciplined by their parents for a few minutes of “time out,” prisoners put in solitary confinement are often isolated

²⁹ Walker v. State, 316 Mont. 103, 68 P.3d 872, 2003 MT 134; <https://www.aclu.org/prisoners-rights/colorado-prisons-continue-warehouse-mentally-ill-solitary-confinement>; Metzner and Fellner, Solitary Confinement and Mental Illness in U.S. Prisons: A Challenge for Medical Ethics, *jaapl* March 2010 vol. 38 no. 1 104-108

³⁰ Ruiz v. Johnson, 37 F.Supp.2d 885, 914 (S.D. Tex. 1999); Madrid v. Gomez, 889 F.Supp. 1146, 1265-66 (N.D. Cal. 1995); Jones ‘El v. Berge, 164 F.Supp.2d 1096 (W.D. Wis. 2001); Indiana Prot. & Advocacy Serv. v. Comm’r, Indiana Dep’t of Corrections, 2012 WL 6738517 (S.D. Ind. Dec. 31, 2012)

³¹ ACA Standard for Adult Correctional Institutions (4th ed.) Standard 4-4249.

³² NCCHC Standard J-E-09.

³³ MACo Standard 08.01.

for weeks and months; in addition, many are mentally ill or unstable and the undeniably harsh effects of isolation for weeks or months on end can have far-reaching consequences, especially if those individuals are not appropriately monitored.

Given the negative impact of solitary confinement, placement of certain prisoners in solitary confinement is wholly inappropriate and may violate the U.S. and Montana Constitutions. Prisoners experiencing detoxification or an acute medical or mental health condition should be in a hospital or in another in-patient setting rather than solitary confinement in a detention center.

In older detention centers, conditions of the physical plant often result in de facto solitary confinement. Old brig jails that normally hold a few people sometimes result in individuals being housed in isolation when only one person is housed in the entire brig; “brig” is a term for jail cells on ships. Many Montana detention centers use old brigs, plucked off the deck of obsolete war ships, to accommodate the growing number of prisoners. This disproportionately impacts women, as the female wing of a detention center is often smaller with fewer prisoners. On several tours, we saw a single woman housed by herself for extended periods of time; in contrast, many men were housed together in a general population block in another section of the jail.

RECOMMENDATIONS

- **Create and implement policies prohibiting solitary confinement for individuals with serious mental illness.**
- **Create and implement policies substantially limiting the length of time people may be placed in solitary confinement.**
- **Create and implement policies requiring prisoners in solitary confinement be monitored by medical and mental health professionals several times a week to ensure their mental health does not deteriorate.**
- **Ensure individuals in disciplinary detention or any other form of solitary confinement receive daily access to indoor and outdoor recreation.**
- **Ensure prisoners in solitary confinement receive the same visitation, mail and telephone privileges as those in the general population.**

STAFFING

LEGAL STANDARDS

Detention centers must retain a sufficient number of adequately trained detention staff to ensure prisoners’ safety and to provide adequate medical and mental health care.³⁴ Understaffing is a very serious problem that leads to prisoner neglect, increased risk of suicide, physical and sexual assault, unsanitary conditions, and lack of access to indoor and outdoor exercise and recreation, among other problems.

ACA and MACo standards require staff who are trained and familiar with the detention centers’ policies and operation.³⁵ Detention centers must be staffed 24 hours a day with alert employees. Importantly,

³⁴ See e.g., *Ramos v. Lamm*, 639 F.2d 559, 573 (10th Cir. 1980) (finding inadequate staffing contributed to prisoner violence and Eighth Amendment violation); *Brown v. Plata*, 131 S.Ct. 1910, 1925 (2011).

³⁵ ACA 1-CORE-2A-09.

staff must be able to perform all functions relating to prisoner security, custody and supervision. If a detention center houses women, it must have at least one woman on duty at all times. Detention centers must have a written staff training, development, and evaluation plan coordinated by a qualified employee. All employees must receive training and orientation under a qualified officer. Within the first year of employment, all staff must receive Basic Detention Officer training and 40 hours of continuing training annually.

Both ACA and NCCHC standards require staff to have appropriate credentials and meet medical standards in the job description. Final clinical judgment must rest with a single designated physician, who must meet with the detention center administrator quarterly and comply with state and federal licensure requirements. Personnel who administer prescription medication must be trained.

The Prison Rape Elimination Act (PREA) requires detention centers to have a PREA coordinator and a zero-tolerance policy towards sexual assault.³⁶ Detention centers must develop, document, and comply with a plan that provides adequate staffing and video monitoring.³⁷

STAFFING IN MONTANA DETENTION CENTERS

We identified several major problems regarding staffing statewide. First, many administrators reported having understaffed detention centers due to inadequate funding. (See [Appendix C.](#)) Second, many administrators reported using untrained personnel in place of detention center staff, including dispatchers and deputies. Contrary to established legal standards, many detention centers have no medical or mental health staff, resulting in an inability to provide adequate medical or mental health treatment to prisoners. Third, many administrators reported difficulty retaining detention staff.

Understaffing is a statewide problem. The majority of administrators reported needing more staff, particularly female staff. A wide range of prisoner-to-staff ratios exists across Montana detention centers. For example, Broadwater, Fergus, Glacier, Mineral and Sanders Counties all reported having six full-time detention officers, but their number of beds varied from 48 (Broadwater) to 30 (Sanders). Beaverhead, Bighorn and Valley Counties reported having five full-time detention officers, yet Big Horn (29) and Valley County (26) have approximately twice the number of beds as Beaverhead (14).

Several counties reported having inadequate detention staff and relying on untrained law enforcement deputies and 911 dispatchers to monitor prisoners. Chouteau County's sheriff reported having only one full-time detention officer for a jail with 28 beds, and utilizing law enforcement deputies as detention staff. Similarly, Musselshell County reported having one full-time detention officer for a 12-bed detention center,

“There is only one jailer employed (working 5 days a week and only at nights during lockdown). When he is not there they are not checked on at all. When he is there it is every 30 minutes.”

—Male Prisoner in Chouteau County Detention Center.

³⁶ PREA Standard 115.11.

³⁷ “PREA directed the attorney general to promulgate standards for all confinement facilities including, but not limited to, local jails, police lockups, and juvenile facilities. See 42 U.S.C. § 15609(7). DOJ has promulgated standards for prisons and jails (28 C.F.R. §§ 115.11 – 115.93), lockups (28 C.F.R. §§ 115.111 – 115.193), residential community confinement facilities (28 C.F.R. §§ 115.211 – 115.293), and juvenile facilities (28 C.F.R. §§ 115.311 – 115.393).” <http://www.prearesourcecenter.org/faq#n1056>

also utilizing law enforcement deputies and dispatch in place of detention staff. Granite, Meagher, Pondera, Powell and Wheatland Counties reported having no detention officers, but instead solely using law enforcement deputies and dispatch staff to oversee their detention centers.³⁸ This is a recipe for disaster as such individuals can be ill-equipped to handle the unique issues that arise in a detention setting, further giving rise to safety concerns and liability exposure.

Detention staff are often paid less than law enforcement deputies. Detention positions are viewed as a stepping stone to deputy positions. This reality is unfortunate given the crucial importance of detention staff. Some administrators also stated that turnover occurs because detention is a “high burnout” job. Professional staff who are respectful of prisoners are a huge indicator of prisoner satisfaction at a detention center. The daily interaction between detention staff and prisoners is crucial, and the point at which counties often incur significant liability for unconstitutional conditions, including use of force and inadequate medical and mental health treatment. The importance of staff-prisoner interaction should lead to counties prioritizing well paid and well trained detention officers. Unfortunately, detention remains an afterthought in many counties throughout Montana.

RECOMMENDATIONS

- Hire an adequate number of detention staff, including female staff.
- Hire qualified medical and mental health professionals to provide services to prisoners.
- Operate detention centers with trained and qualified detention staff 24 hours a day, rather than relying on dispatch staff or on-duty law enforcement officers.
- Provide training, including crisis intervention training, to detention staff as part of their professional development.
- Ensure that detention center staff receive wages equal to law enforcement deputies.
- Ensure commissioners and other county officials take interest in day-to-day detention center functions and emphasize the importance of detention staff.

MEDICAL CARE

LEGAL STANDARDS

Providing adequate medical services for prisoners is a crucial function for detention centers. Detention centers often hold prisoners who are suffering acute medical conditions, such as alcohol or substance withdrawal. Many individuals enter detention centers with illnesses that they are receiving ongoing treatment for in the community, such as chemotherapy for cancer. Detention centers are on the “front line” of receiving individuals with acute medical and mental health conditions. Counties could reframe their thinking to view detention as an opportunity to provide needed medical and mental health services to members of the community who otherwise may not receive services. Gallatin County reported having transitioned to this approach. Although it does require increased funding for detention center services, it concomitantly reduces funding needed for other county social services.

One opportunity to provide medical care and to reduce costs for detention centers is to enroll eligible inmates in Medicaid. Although Medicaid will not pay benefits for people in custody,³⁹ if the inmate needs medical care outside the facility requiring inpatient admission then Medicaid will pay those costs

³⁸ Some counties, such as Powell and Pondera, reported that some deputies received detention training.

³⁹ 42 U.S. Code § 1396d(a)(27)(A), known as the “inmate exception” to Medicaid.

for an enrolled inmate.⁴⁰ Another significant advantage of enrolling eligible inmates in Medicaid is that upon release they will have access to health care, including coverage for mental health and substance abuse counseling.⁴¹ This is a benefit to both the individual and to society as it improves the person's chances to avoid reoffending.

Detention centers must provide medical services that are “reasonably commensurate with modern medical science and of a quality acceptable within prudent professional standards” and “reasonably designed to meet routine and emergency medical, dental and psychological or psychiatric care.”⁴² If a prisoner requires care that is not available on-site, the failure to obtain such care is a constitutional violation.⁴³ Providing care for prisoners generally means paying for the care, given that most prisoners have limited resources and no medical insurance.⁴⁴ The fact that needed care is expensive does not excuse officials from providing it.⁴⁵

Officials must provide a medical staff that is “competent to examine prisoners and diagnose illnesses” and “able to treat medical problems or to refer prisoners” to those who can.⁴⁶ Using unqualified personnel is a constitutional violation. Non-physician staff, such as nurses and physician’s assistants, cannot be assigned tasks beyond their training or left without adequate supervision.⁴⁷ Obsolete medical equipment and shortages or unavailability of eyeglasses, medication, or prosthetics can also violate the Constitution.⁴⁸ In order to provide adequate medical care, officials must have a screening process to identify prisoners with medical needs and make sure that they are diagnosed and treated. Prisoners always have the right to communicate their medical problems to detention center medical staff.⁴⁹ “Systematic deficiencies in staffing, facilities, or procedures [which] make unnecessary suffering inevitable” are a constitutional violation,⁵⁰ as is screening by untrained staff in lieu of a doctor.⁵¹

Both MACo and ACA standards require that prisoners have access to a licensed physician or other health authority and indigent prisoners are not excluded from care based on their inability to pay.⁵² Detention centers must have written policies and procedures that govern the delivery of medical, dental and mental health services. The policies must include procedures for screening, emergency and non-emergency services, arrangements for chronic care and supervision, and handling of pharmaceuticals and infectious diseases. A health appraisal of each prisoner must be provided within 14 days of

⁴⁰ 42 CFR §435.1009. See also County Jails and the Affordable Care Act: Enrolling Eligible Individuals in Health Coverage, <http://www.americanjail.org/county-jails-and-the-affordable-care-act/>. A lengthy inmate hospitalization may result in a major financial obligation for a county that could be avoided with Medicaid coverage.

⁴¹ <http://www.mentalhealth.gov/get-help/health-insurance/index.html>.

⁴² *Fernandez v. U.S.*, 941 F.2d 1488 (11th Cir. 1991); *Tillery v. Owens*, 907 F.2d 418 (3d Cir. 1990).

⁴³ *Kaminsky v. Rosenblum*, 929 F.2d 922, 927 (2d Cir. 1991).

⁴⁴ *Montmouth County Corr. Inst. Inmates v. Lanzaro*, 834 F.2d 326 (3d Cir. 1987).

⁴⁵ *Harris v. Thigpen*, 941 F.2d 1495 (11th Cir. 1991); *Monmouth County Corr. Inst. Inmates*, 834 F.2d 326 (3d Cir. 1987).

⁴⁶ *Hoptowit v. Ray*, 682 F.2d 1237, 1253 (9th Cir. 1982).

⁴⁷ *Toussaint v. McCarthy*, 801 F.2d 1080, 1112 (9th Cir. 1986).

⁴⁸ *Newman v. Ala.*, 503 F.2d 1320, 1331 (5th Cir. 1974).

⁴⁹ *Hoptowit*, 682 F.2d at 1253 (9th Cir. 1982).

⁵⁰ *Todaro v. Ward*, 565 F.2d 48, 52 (2d Cir. 1977) (quoting *Bishop v. Stoneman*, 508 F.2d 1224, 1226).

⁵¹ *Toussaint*, 801 F.2d at 1111-12 (9th Cir. 1986).

⁵² MACo Standards 11.01 and 11.04 and ACA Standard 1-CORE-4C-01.

arrival unless a similar appraisal has been completed within the previous 90 days. All results must be compiled into an individual health record or treatment plan. Detention centers must also provide female prisoners adequate obstetrical services by a qualified provider and adequate provisions of pregnancy management including pregnancy testing, routine and high-risk prenatal care, management of chemically addicted pregnant prisoners, appropriate nutrition, and postpartum follow up.

NCCHC standards provide extensive and comprehensive guidelines for all aspects of prisoner health. NCCHC requires written policies and procedures that are clearly communicated to prisoners upon arrival⁵³ and that prisoners are adequately screened and receive proper initial health assessments. Detention centers must also provide prisoners with appropriate medical diets, adequate detoxification, and pregnancy care, including access to emergency contraception and counseling. In addition, detention centers must provide adequate care for the terminally ill.

MEDICAL CARE IN MONTANA DETENTION CENTERS

Detention centers reported a variety of medical services approaches, including contracting with a private company, such as Spectrum, to provide medical care, contracting with a local nurse and/or doctor, or using local clinics or hospitals on an as-needed basis. During interviews, many detention center administrators reported vague and unspecified approaches to providing medical health care on a case-by-case basis. The majority of detention centers charge prisoners for medical care. Some detention center administrators reported difficulties obtaining approval from the DOC prior to providing DOC-sentenced prisoners with medical care.

Prisoner responses regarding medical care painted an abysmal picture. About 43 percent of responding prisoners did not feel their medical health needs were being met. (See [Appendix E.](#)) The most consistent complaint was medical needs were being neglected or outright ignored. Many prisoners responded that medical issues that demanded immediate attention, such as spreading rashes, viral infections, and communicable illnesses, were ignored or not properly treated by medical staff. Prisoners generally reported they do not see the doctor when they need to, and staff do not take their problems seriously. Prisoners also reported nurses and physician's assistants make medical decisions that should be made by a physician. Prisoners reported medical professionals making decisions without first seeing the prisoner. Two prisoners reported that they were pregnant upon arrival and had miscarriages while incarcerated. One reported being held with a cellmate with a communicable disease. Another reported having a miscarriage after waiting 60 days for a doctor visit.⁵⁴

"I even showed the nursing staff . . . that I need the medications. I still have not been given any medications I need, it[']s been six months and my symptoms are far more severe than ever. I also showed them medical records from a hospital and treatment center. There is no program to help with getting my glasses here. I've never been so blind. Somebody stole my glasses and now I can't see. Migraines and mental health problems plague me every[]day. It feels like unbearable torture. Please help."

—Male Prisoner in Yellowstone
County Detention Center

⁵³ NCCHC Standard J-A-05 and J-E-01.

⁵⁴ The ACLU of Montana released a report in September 2014 detailing the lack of reproductive health policies in Montana's jails that put pregnant women at risk. Titled *Reproductive Lockdown: An Examination of Montana Detention Centers and the Treatment of Pregnant Prisoners*, the report can be found at <http://aclumontana.org/reproductive-lockdown/>.

The highest percentage of prisoners who reported inadequate medical care were detained in Missoula and Lake Counties. In Missoula County, 83.3 percent of prisoners reported their medical needs were not being met, while 58.3 percent of Lake County prisoners reported inadequate medical care.

Prisoners from across Montana reported inadequate access to medications. Many reported not being able to afford over-the-counter pain medications, such as Tylenol or Advil, which cost upwards of 50 cents a pill. Many prisoners reported being forced to go without prescription medication they needed for medical issues, such as diabetes, hepatitis C, and prescription pain medications for a broken back.

“While incarcerated I got some kind of mersa [MRSA] from head to toe, it was severe. Nobody did a thing.”

—Male Prisoner in Big Horn County Detention Center

Prisoners consistently reported long wait times to see any medical professionals, especially if the professionals were not employed on-site. One prisoner in Big Horn County reported not receiving medical attention in over seven weeks, despite having filled out three different requests for care, none of which were responded to. Many prisoners reported inadequate treatment, specifically for dental issues or if their illness or injury required specialized help not offered at the detention center. Numerous prisoners from both Silver Bow and Cascade Counties reported painful dental conditions that were ignored or neglected, ranging from pulling their teeth and refusing dentures to ignoring painful abscessed teeth or advanced decay that exposed nerves. Many prisoners reported poor or non-existent follow-up care to dental procedures and many who felt that their healthcare was inadequate also reported an unresponsive medical kite request⁵⁵ and grievance system.

RECOMMENDATIONS

- Provide to all prisoners adequate and timely care from appropriately-trained medical professionals.
- Take seriously prisoners’ requests for medical care and keep written logs of responses to medical requests.
- Keep written logs of medical treatment.
- Contract with qualified medical professionals to manage medication and provide adequate medical services.
- Enact a policy with set times by which medical requests will be reviewed by medical professionals.
- Provide needed assistive devices, such as hearing aids, prosthetics and eyeglasses.
- Provide medical care for all prisoners even if they cannot afford it.
- Provide prisoners with adequate addiction treatment, particularly when “detoxing.”
- Provide pregnant prisoners with pregnancy-related care.
- Implement a quality control system to ensure adequate care.
- Assist eligible inmates with enrolling in Medicaid.

MENTAL HEALTH CARE

LEGAL STANDARDS

Many prisoners in Montana have mental illness, and detention centers have a legal and moral obligation to provide those prisoners with adequate care. Courts have found various deficiencies in psychiatric care and treatment of prisoners with mental illness including lack of mental health screening on

⁵⁵ A “kite” is a note from an inmate requesting services of some kind.

intake,⁵⁶ failure to follow up with prisoners who have known or suspected mental disorders,⁵⁷ failure to hospitalize prisoners whose conditions cannot be treated in a detention center,⁵⁸ gross departures from professional treatment standards,⁵⁹ and failure to separate the severely mentally ill from general population.⁶⁰ Housing prisoners with mental illness in isolation is unconstitutional;⁶¹ use of mental health seclusion and restraint is restricted to legitimate mental health purposes, closely supervised by a medical authority, conducted in a humane manner,⁶² and never used for disciplinary purposes.⁶³ Solitary confinement or isolation should never be imposed on individuals with mental illness.

Many constitutional violations of prisoner’s mental health care stem from inadequate staffing. Failure to train staff to deal with prisoners with mental illness can be unconstitutional,⁶⁴ as can knowingly tolerating inadequate mental health staff.⁶⁵ In addition, mental health staff must spend more than mere “minutes per month” with prisoners with mental illness.⁶⁶ Courts have held unconstitutional abrupt discontinuation of prisoners’ psychiatric medications.⁶⁷ Unconstitutional as well are mental health care systems that provide care only to prisoners who ask for care, given that many prisoners with mental illness are incapable of assessing their own mental health needs.⁶⁸

“So many people
are in jail because
they don’t have
appropriate services.
It’s just sad.”

–Yellowstone County
Detention Center
Administrator

Both MACo and ACA standards require that prisoners be screened for mental health issues when they arrive.⁶⁹ ACA requires that detention centers have a mental health program and prisoners have access to services as clinically warranted by the detention center’s health authority, including screening for mental health problems, referral to outpatient services, intervention and management of acute psychiatric episodes, stabilization of the mentally ill, prevention of psychiatric deterioration, referral and admission to inpatient facilities, and informed consent for all treatment. Pharmaceuticals must be managed in accordance with policies and procedures approved by the health authority—only qualified professionals may dispense and administer those pharmaceuticals. Prisoners must receive needed psychotropic medications and, if they refuse to take them, only a physician may authorize involuntary administration.

NCCHC standards require all prisoners receive mental health screening and prisoners with positive

⁵⁶ Gibson v. County of Washoe, Nev., 290 F.3d 1175, 1189 (9th Cir. 2002).

⁵⁷ Id.

⁵⁸ Or. Advocacy Ctr. v. Mink, 322 F.3d 1101, 1121-22 (9th Cir. 2003).

⁵⁹ Smith v. Jenkins, 919 F.2d 90, 93 (8th Cir. 1990).

⁶⁰ Gates v. Cook, 376 F.3d 323, 342-43 (5th Cir. 2004).

⁶¹ Ruiz v. Estelle, 243 F.3d 941 (5th Cir. 2001).

⁶² Buckley v. Rogerson, 133 F.3d 1125, 1127-30 (8th Cir. 1998).

⁶³ Nelson v. Heyne, 491 F.2d 352, 356-57 (7th Cir. 1974).

⁶⁴ Id.

⁶⁵ Greason v. Kemp, 891 F.2d 829 (11th Cir. 1990).

⁶⁶ Cabrales v. County of Los Angeles, 864 F.2d 1454, 1461 (9th Cir. 1988).

⁶⁷ Steel v. Shah, 87 F.2d 1266, 1269-70 (11th Cir. 1996).

⁶⁸ Coleman v. Wilson, 912 F. Supp. 1282, 1305-06 (E.D. Cal. 1995).

⁶⁹ MACo Standard 11.10 and ACA Standard 1-CORE-4C-09.

screens receive an extended mental health evaluation within 14 days of admission.⁷⁰ Mental health services must be available to all prisoners who require them, either on site or by a referral to appropriate alternative facilities. If prisoners require medications, detention centers must meet their needs and conform to legal requirements.

MENTAL HEALTH CARE IN MONTANA DETENTION CENTERS

Detention centers must deal with the realities of our broken and inadequate mental health system. Many administrators voiced frustration and concern both with the lack of community placement options for individuals with mental illness and the community expectation that detention centers are appropriate places for people with mental illness. Some detention administrators reported that local hospitals resist admitting an arrestee in acute mental health crisis. Many administrators also reported that local hospitals arrestees with acute mental illness to detention centers prior to the arrestee stabilizing. Yellowstone County is considering including a mental health unit in future expansion. While frustrated with the lack of community services, and aware that detention is not a substitute for a hospital, detention staff acknowledges the need to be realistic about their continuing obligation to house people with mental illness. Despite the systemic causes, detention centers are constitutionally obligated to provide adequate mental health care, and should not house prisoners if such care cannot be provided.

“You can’t throw someone in jail for being crazy.”

–Musselshell County Sheriff

During interviews, administrators generally estimated between 50 and 90 percent of prisoners have mental health issues and between one-third and two-thirds of prisoners take medications for mental illness.

Despite this high percentage of prisoners with mental illness, many Montana detention centers do not provide adequate mental health services to prisoners. Of the 332 prisoners who responded, 101 (30.4 percent) reported dissatisfaction with the mental health services at their detention center. (See [Appendix F](#).) A consistent theme was lack of access to trained mental health personnel. Another issue is that detention centers routinely reported using solitary confinement to house prisoners with mental illness, despite acknowledging it is not a good option. Numerous detention centers have no contracts in place to provide regular or as-needed mental health care.

One pervasive statewide trend concerned the distribution and management of psychiatric medications.

Many prisoners identified hurdles to getting needed medications. Prisoners reported not being able to afford their medication due to the exorbitant cost of both over-the-counter and prescription drugs. In some instances, the prescription medications were for severe depression, bipolar disorder or schizophrenia. Many prisoners described how this cost barrier resulted in their stopping or reducing their medicine immediately and abruptly upon entry. Detention centers in rural areas are often in communities that have no mental health

“The jail has no mental health staff [. . .] they cut you completely off meds cold turkey, like my anti-psychotic Seroquel and anti-depressant Doxepin. It took two weeks just to get my Seroquel back that I’ve been on for four years. They take everyone’s meds regardless of the risk.”

–Male Prisoner in Lewis and Clark County Detention Center

⁷⁰ NCHC Standard J-E-05.

provider. In smaller communities, detention staff reported familiarity with arrested individuals who may have mental health issues.

RECOMMENDATIONS

- **Provide adequate mental health screening upon entry and treat individuals appropriately.**
- **Do not use excessive force, restraint, or isolation for prisoners with mental illness.**
- **Use adequately trained staff to manage prisoners with mental illness and to deal with mental health crises.**
- **Make psychiatric medications available and affordable and do not discontinue except on doctor's orders.**
- **Provide adequate mental health care to detainees, either at the detention center or at an off-site facility.**
- **Never deny prisoners mental health care because of their inability to pay.**
- **Implement a functioning communications system that allows prisoners to request and timely receive mental health care.**
- **Implement a procedure that includes regular and as needed confidential visits by qualified mental health professionals.**

OVERCROWDING

LEGAL STANDARD

Overcrowding accompanied by unsanitary and dangerous conditions is unconstitutional.⁷¹ The impact of overcrowding is exacerbated and likely to violate the Constitution when prisoners have limited time out of their cell or housing pod.⁷² Forcing a prisoner to use a floor mattress for “anything other than brief emergency circumstances,” or more than a few days, or without regard to the length of confinement is unconstitutional.⁷³

MACo and ACA standards require that prisoners have 35 feet of “unencumbered” floor space per prisoner in single- and multiple-occupancy cells, which increases to 70 square feet if prisoners are confined ten hours a day.⁷⁴ Prisoners should be locked in their cells no more than ten hours a day and must have access to a dayroom that offers 100 square feet of living space. For dormitories, MACo requires that detention centers provide 50 square feet of floor space per prisoner, but only if they participate in out-of-housing-unit activities at least eight hours a day, five days a week. If more than four people are sleeping in one area, sleeping partitions are required, and prisoners must have access to toilets and washbasins 24 hours a day.

OVERCROWDING IN MONTANA DETENTION CENTERS

Across the state, some detention centers are routinely operating with populations exceeding those they were designed to accommodate. Sheriffs and detention administrators across the state are looking for solutions to overcrowding, including expanding existing facilities, building new ones

⁷¹ Harris v. Angelina County Tex., 31 F.3d 331 (5th Cir. 1994).

⁷² Hubbard v. Taylor, 538 F.3d 229 (3rd Cir. 2008) (allowed extreme crowding in cells where prisoners had access to a dayroom for 14 hours a day); Bell v. Wolfish, 411 U.S. 520 (1973) (mitigating effect of recreation would make a difference in analysis).

⁷³ Union County Jail Inmates v. Di Buono, 713 F.2d 984 (3rd Cir. 1983); Lareau v. Manson, 651 F.2d 96 (2d Cir. 1981).

⁷⁴ MACo Standard 18.02.01.

and looking to alternatives to incarceration, including home monitoring. Across Montana, detention center administrators report overcrowding is a serious issue. In Flathead County, a detention center originally designed to house 65 prisoners was modified to hold more than 100.⁷⁵ Butte-Silver Bow Detention Center was built just ten years ago, but is already regularly turning prisoners away because of overcrowding issues.⁷⁶ Roosevelt, Dawson, Lewis and Clark, Custer, and Yellowstone Counties all reported that they are working on jail expansion plans.⁷⁷ Lake and Flathead Counties are also considering detention center expansions or new construction.

In Yellowstone County, which recently had two prisoner suicides, respondents attributed suicides to the deplorable overcrowded conditions. According to recent news reports, “the Yellowstone County Jail is built to house 286, yet officials said on any given day they have anywhere from 375 to 425 inmates.”⁷⁸ Other reports state “[i]n the first four months of 2013 the average daily population was 437. On April 22 the jail held 491 inmates.”⁷⁹ Prisoners in Yellowstone County identified an increased likelihood of fighting and violence, as well as lack of sanitation and adequate food.

During our 2013 interview and tour of Lewis and Clark County detention center, administrators reported an average population of 75-80 for a facility designed to hold 58 prisoners, with an optimum capacity of 43. During our tour, we observed a prisoner going through “detox” on a mat in the booking area and five prisoners sleeping on mats on the floor of the library in unsafe conditions without immediate access to a bathroom. We have since been informed the county no longer houses prisoners in the library.

Many detention centers are forced to accommodate swelling jail populations by using plastic makeshift beds called “boats.” At least 12 use boats occasionally, while six use them daily (Big Horn, Cascade, Dawson, Flathead, Lake, and Yellowstone). Prisoners in the overcrowded detention centers said it was common for prisoners to sleep on the floor in cells or communal areas, such as the library. Prisoners consistently reported individual cells were at 125-200 percent capacity. Dawson County reported regular overcrowding, which creates cramped living conditions that add to prisoners’ frustrations. Dayrooms

[In response to being asked if the detention center is overcrowded]
“Yes – in G pod we have 12 cells with 2 bunks each. For the past 5 months there has always been a 3rd person forced to sleep on floor (with no boat). After 36 girls – the rest sleep in the dayroom (sans boat).”

–Female Prisoner in Cascade County Detention Center

“I am aware of half the population in this facility sleep[s] in plastic boats. I myself have slept in one for over a year! My back has become a problem ever since.”

–Male Prisoner in Yellowstone County Detention Center

⁷⁵ Tara Oster, “Overcrowding a concern in Lake, Flathead county jails” KPAX, April 30, 2013, <http://www.kpax.com/news/overcrowding-a-concern-in-lake-flathead-county-jails/>

⁷⁶ Grace Ditzler, “Butte-Silver Bow Detention Center overcrowded; misdemeanors may be released” KTVM, Sept. 10, 2013, <http://www.nbcmontana.com/news/buttesilver-bow-detention-center-overcrowded-misdemeanors-may-be-released/21874312>

⁷⁷ Jason Stuart, “Jail Expansion Plans Moving Forward” Ranger Review, March 7, 2014, <http://rangerreview.com/news/jail-expansion-plans-moving-forward>.

⁷⁸ “Overcrowded Jails”, KULR News, Aug. 21, 2013.

⁷⁹ “Yellowstone County eyes work program” NBC Montana, May 12, 2013.

in several detention centers cannot be properly utilized because prisoners sleep on the floor when they become overcrowded.

Consistent with the increasing numbers of females detained, several detention centers reported overcrowding of female prisoners, who are generally housed in smaller areas. Yellowstone County is considering building an expansion for women due to the dire overcrowding in its existing detention center. Missoula County reported recently transitioning a pod from males to females given the burgeoning female population. The Missoula County Detention Administrator reported seeing the recent spike in female prisoners as the most notable increase in prisoner populations he has observed in 20 years.

“Each pod has 14 cells, two bunks to a cell. But, every cell has 1 person on the floor at almost all times, and when the floors are occupied, inmates are placed in the dayroom floor. This happens almost every week for durations exceeding 2 weeks or more.”

–Female Prisoner in Cascade County Detention Center

Prisoners housed in common areas reported having no access to a toilet overnight and having to ask other prisoners for permission to use their toilet or sink. One respondent said prisoners who sleep in the dayroom or library have to “relieve themselves in trash cans, cups, and showers.” Several prisoners interviewed in overcrowded detention centers reported that tensions between prisoners increased in overcrowded pods.

IF YOU BUILD IT THEY WILL COME – LARGER DETENTION CENTERS ARE NOT THE ANSWER

Many of the largest detention centers in Montana are the most overcrowded. A lesson from this correlation is that larger detention centers will not alleviate overcrowding. Instead, counties must be proactive in seeking out and implementing options that will keep people from being booked into detention centers or will shorten the length of time that someone waits in the detention center before trial.

For quality-of-life offenses, such as public drunkenness or disorderly conduct, counties can allow officers to issue a summons rather than arresting suspects, thereby decreasing pre-trial detention populations. In many of the most rural counties with the smallest detention centers, a strong sense of community and personal knowledge of individuals charged with crimes resulted in successful community monitoring without pre-trial incarceration. In larger communities, community monitoring can be formalized through pre-trial diversion programs, bond review procedures, and risk assessment to ensure that only individuals who are a threat or flight risk are detained pre-trial. By successfully identifying pre-trial detainees who pose no threat to others or no flight risk, courts can minimize the number of people held pre-trial. Extensive pre-trial release options can include home confinement, day reporting program, and daytime work release.

“People lying on the floor in dayroom because there [are] not enough seats, 15 people in a cube designed for 8.”

–Male Prisoner in Big Horn County Detention Center

Developing bond review procedures allows the court to assess whether individuals who cannot post bond need to remain detained; if not, the pre-trial populations in detention centers could be decreased.

Counties can also develop alternative sentencing options and encourage judges to utilize them. Innovative alternative sentencing, such as drug, mental health and veterans’ courts, encourages a more rehabil-

itative rather than punitive focus. Other crimes could be addressed through a restorative justice paradigm that focuses on repairing harm rather than punishment. For example, Yellowstone County is looking at out-of-state diversion models, such as work-release programs, to curb future detention populations.

RECOMMENDATIONS

- **Develop comprehensive risk assessment instruments and processes to identify candidates for pre-trial release.**
- **Establish more extensive pre-trial release options - including home confinement, day reporting program, and daytime work release.**
- **Develop effective bond review procedures.**
- **Issue summonses for quality-of-life offenses.**
- **Further develop alternative sentencing options.**

BASIC NECESSITIES OF EXERCISE, FRESH AIR, AND NATURAL LIGHT

LEGAL STANDARDS

The constitutional right to fresh air and outdoor exercise is well established. Courts hold some form of “regular outdoor exercise is extremely important to psychological and physical wellbeing,” and long-term deprivation of outdoor exercise can constitute cruel and unusual punishment.⁸⁰ Courts have also held denial of outdoor exercise for prisoners in administrative segregation raised constitutional concerns.⁸¹ Only allowing prisoners into a room with a grated window or an open roof in lieu of a true outdoor facility is inadequate.⁸²

In October, 2013, a federal judge entered a judgment ordering Missoula County Detention Facility to build outdoor exercise facilities for female, juvenile and segregated prisoners because the deprivation of outdoor recreation was a violation of both the federal and Montana Constitutions.⁸³ Plaintiffs in the case reported skin problems, hair loss, depression, problems sleeping, claustrophobia, and panic attacks resulting from deprivation of fresh air and outdoor exercise. In response, Missoula County adopted a revised recreation policy that can serve as a model to other Montana counties. (See [Appendix V](#).) The policy requires access to at least one hour of outside exercise five days a week. The detention center must supply prisoners with clean and usable coats during inclement weather. Only the detention administrator may order “no rec” if a prisoner is to be deprived of outdoor exercise. Detention center staff cannot take away recreation privileges for disciplinary reasons.⁸⁴

Both MACo and ACA standards require that prisoners have access to exercise and recreation opportunities outside of the cell at least one hour every day.⁸⁵ Facilities must provide an indoor exercise area when extreme weather precludes access to outdoor exercise. Segregated prisoners must have access to both outdoor and enclosed exercise areas. The detention center must provide prisoners with appropriate clothing during inclement weather.

⁸⁰ Johnson v. Woodford, 336 Fed.Appx. 592 2009 WL 1452635 (9th Cir. 2009); Frazer v. Ward, 426 F.Supp. 1354 (N.D.N.Y. 1977); Lopez v. Smith, 203 F.3d 112 (9th Cir. 1996); Martine v. Carey, 563 F.Supp. 984 (D. Or. 1983).

⁸¹ Toussaint v. Yockey, 722 F.2d 1490 (9th Cir. 1984).

⁸² Keenan v. Hall, 83 F.3d 1083 (9th Cir. 1996).

⁸³ Chief Goes Out v. Missoula County, CV 12-155-M-DWM, 2013 WL 139938 (D. Mont. Jan. 10, 2013).

⁸⁴ Even inmates in Disciplinary lockdown are entitled to outdoor recreation. See Appendix V.

⁸⁵ MACo 17.08 and ACA 1-CORE-5C-01.

Recreation in Montana Detention Centers

OUTDOOR EXERCISE

Many Montana detention centers do not allow prisoners to go outside. Of 36 detention centers, 20 do not provide outdoor exercise.⁸⁶ Despite the well-established constitutional right to outdoor exercise, particularly in the Ninth Circuit, every Montana detention center built in the last ten years does not have an outdoor recreation area.⁸⁷ Even detention centers with an outdoor recreation area often do not provide prisoners with regular daily access. Many detention centers do not have a formal recreation policy, and provided recreation contingent on staffing and weather. When ACLU of Montana staff toured Rosebud County's Detention Center, which does have an outdoor recreation area, they learned that prisoners had gone months without outdoor recreation because of staffing shortages.

Big Horn County reported it had an outdoor recreation area, but prisoners were allowed outside only if it was 60 degrees or warmer and were not provided jackets. As a result, 100 percent of prisoners in Big Horn County responded they did not have access to outdoor recreation. The average time prisoners in Big Horn County reported being without outside recreation was 13.7 weeks. Without adoption and implementation of a policy providing access, even prisoners in detention centers with outdoor recreation are routinely deprived of the right.

In counties without outdoor recreation, many prisoners have not been outside for months. Several prisoners have not been outside for over a year. Prisoners in Sanders, Flathead and Mineral Counties reported going outside regularly and receiving appropriate clothing in cold weather. In addition, Beaverhead County has shown initiative by constructing a new outdoor recreation facility attached to its detention center. Fergus County has begun the process of assuring that prisoners are allowed outdoor recreation by funding an architectural design for an outdoor recreation area and are moving forward in its construction.

Prisoners' responses when asked
"How long has it been since you were
last outside?"

"17 months except for court
appearances" and "It has been 1yr-5
months."

-Silver Bow County

"15 months+"

-Lake County

"13 ½ months"

-Gallatin County

"I haven't been outside or seen the
outside in 318 days, not even a breath
of the outside."

-Richland County

"It's been almost 11 months since I
was last outside"

-Cascade County

"Over 80 days when I went to the
[Doctor] but if you don't count that it
has been 135 days" and "I have been
outside 5 times for a short walk to
court in 439 days as of today"

-Beaverhead County

⁸⁶ Beaverhead, Broadwater, Butte-Silverbow, Cascade, Deer Lodge, Fergus, Gallatin, Glacier, Granite, Hill, Lake, Lincoln, Meagher, Musselshell, Park, Powder River, Powell, Richland, Toole, and Valley Counties reported not having outdoor exercise areas. Park County's response was ambiguous, stating that it did have an outdoor recreation area, but further stating "this is not an outdoor recreation yard." Unfortunately, Park County officials were unwilling to speak with the ACLU or provide a tour.

⁸⁷ Broadwater (2005), Butte (2004), Deer Lodge (2004), Gallatin (2011), Glacier (2008), Richland (2011), and Valley (2011).

RECOMMENDATIONS

- Provide outdoor recreation for all prisoners for a minimum of one hour per day, five days per week.
- Provide coats and other clothing when weather so requires.
- Do not take away outdoor exercise as a disciplinary measure.
- Ensure that prisoners in isolation receive daily access to outdoor recreation areas.

INDOOR EXERCISE

Most detention centers allow prisoners access to a dayroom for several hours a day. However, access to a dayroom is not indoor exercise. A dayroom is a central area of detention centers attached to cells with communal seating and a television or radio. In day rooms, there is generally no room for exercise and no opportunity to leave the housing area. Conversely, indoor exercise, which prisoners have a right to access, consists of activities in a gym, weight room or some other facility designed for recreation.

We observed that there is a wide range of what is considered an indoor recreation area. In some cases, such as Lincoln County, a small library with limited natural light is used as an indoor recreation area. In others, such as Lake and Gallatin Counties, indoor recreation areas have large windows or skylights that open to provide fresh air. Several detention centers lack both indoor and outdoor exercise areas, including Fergus, Granite, Meagher, Musselshell, Powder River, Powell, and Wheatland Counties.⁸⁸ Some detention centers, such as Lewis and Clark and Ravalli Counties, have libraries, which provide prisoners out-of-cell opportunities, but do not provide the opportunity for exercise or fresh air.⁸⁹ Prisoners' responses reported the most inadequate access to indoor recreation in Dawson, Fergus, Big Horn, Rosebud, Park, and Lake Counties.

RECOMMENDATIONS

- Provide prisoners with regular access to indoor exercise.
- Ensure indoor exercise areas have sufficient space to allow for exercise.
- Provide natural light in indoor exercise areas.
- Do not take away indoor recreation as a disciplinary measure.

Natural Light and Lighting Schedule

ACA standards require all rooms and cells provide all prisoners with access to natural light and that lighting throughout the detention center is "sufficient for the tasks performed."⁹⁰ MACo standards require the same access to lighting in newly constructed or renovated detention centers.⁹¹ If prisoners in the general population are confined to a cell for ten or more hours a day, they must have access to natural light by means of an opening or window of at least three square feet. In newly constructed detention centers, even prisoners who spend fewer than ten hours a day in their cell must have that same access to natural light.

⁸⁸ It is unclear whether Park County has an indoor recreation area. In response to our request for public information, county officials stated that the detention center has an indoor recreation area, but stated that it is the same dimension as the cells, making it ambiguous whether what is referred to is actually a day room. This is particularly likely given the prisoners' responses regarding indoor exercise in Park County. Missoula County's detention center has indoor exercise areas for some housing pods, but not others.

⁹⁰ ACA Standard 1-CORE-1A-09.

⁹¹ MaCo Standards 19.03 and 19.04.

Adequate lighting is an “indispensable aspect of adequate shelter” required by the Eighth Amendment.⁹² Prisoners must be able to read from their bunk for lighting to be sufficient.⁹³ Constant illumination of light can be unconstitutional,⁹⁴ especially if it is alleged or proven to interfere with sleep.⁹⁵

NATURAL LIGHT AND LIGHTING SCHEDULE IN MONTANA DETENTION CENTERS

Several detention centers have limited or no natural light. Prisoners in eight counties consistently reported inadequate natural light, including Lake, Park, Lewis and Clark, Beaverhead, Rosebud, Missoula, Yellowstone, and Ravalli counties. In addition, Powder River County administrators reported having no natural light in cells or day rooms. In other counties, there is a wide variety of access to natural light. Variations include frosted or non-frosted windows, skylights, windows in some cells and not others, and windows in day rooms but not cells. Prisoners in some of these counties reported adverse impact on their mental health. One prisoner reported seeing the sunlight only twice a month for 15 minutes at a time. Prisoners from several counties, including Sanders, Dawson, Toole, and Rosebud, reported adequate access to natural light. (See [Appendix I.](#))

Scheduling of non-natural light is also a problem for many Montana prisoners. Prisoner responses from several detention centers reported that lights were left on too long, which negatively impacted their mental health and ability to sleep. Responses from Lake, Big Horn, Lincoln, and Cascade counties reported significant problems with light schedules. Prisoners reported Big Horn County keeps lights on 24 hours a day, seven days a week. In other counties, prisoners consistently stated that lights were turned off for only five to seven hours a day.

RECOMMENDATIONS

- Provide prisoners with access to natural light.
- When renovating or constructing detention centers, install adequate windows or openings in every cell.
- Adjust lighting schedules so as not to impede prisoners’ ability to sleep.

OUTDATED FACILITIES AND BRIG JAILS

Many of the detention centers in Montana are old and outdated, which adversely affects prisoner safety, adequate supervision, fresh air and exercise, natural light, sanitation, plumbing, and other conditions. Outdated detention centers generally are not in compliance with fire codes, creating a very dangerous

“I occasionally, maybe 2 times per month, have the opportunity to see actual light. Fifteen minutes at one time.”

–Male Prisoner in Park County Detention Center

“Suicide watch has lights on 24/7. I was on this for 3 out of 7 months.”

–Male Prisoner in Cascade County Detention Center

“They’re always on which is psychologically draining. Plus the jail would save \$ if the lights weren’t on all the time

–Male Prisoner in Gallatin County Detention Center

⁹² Toussaint v. McCarthy, 597 F. Supp. 1388, 1409 (N.D.Cal. 1984), aff’d in part and rev’d in part on other grounds, 801 F.2d 1080 (9th Cir. 1986).

⁹³ Id.

⁹⁴ Id.

⁹⁵ Ferguson v. Cape Girardeau County, 88 F.3d 647, 650 (8th Cir. 1996).

environment for prisoners. Outdated detention centers generally do not have call buttons in cells, are understaffed, and have limited surveillance. In some cases, prisoners' only option in an emergency is to pound on the door and hope someone hears them.

Female prisoners are often disproportionately placed in inadequate portions of the physical plants in detention centers. Women are often housed in older, smaller sections of detention centers with inadequate surveillance, smaller dayrooms and less access to recreation areas. For example, during a December 2012 tour of Lincoln County Detention Center, we observed women in a small and old section of the detention center with no video surveillance or call buttons. Female prisoners had to bang on the door in order to get staff's attention. Meanwhile, male prisoners were housed in the relatively new section with heightened monitoring. The detention center subsequently informed us the women's area is now video monitored. In Musselshell County, women are sometimes held in 24-hour lock down in a tiny, old holding cell with no window and a non-functioning sink.

At least two counties, Granite and Meagher, operate detention centers built in the late 1800s. In Musselshell County, prisoners' dorm and cells are accessible only with an old turnkey, and there is no fire sprinkler system in the dorm or cells.

At least four detention centers continue to operate using brigs from antiquated warships to house prisoners.⁹⁶ Brig jails are essentially small cages. They use antiquated lock and key systems, provide inadequate square footage per prisoner, are difficult to properly monitor, violate fire codes, place prisoners in serious danger of sexual and physical assault, and provide inadequate sunlight and outdoor exercise.

In Wheatland County, administrators reported prisoners are held in World War II brig cells. The small windowless cells are too old to wire for electricity and, as a result, there is no light in the cells. Wheatland County has no full-time detention staff, and utilizes on-duty deputies and dispatch staff. Prisoners yell if they are having an issue in their cells, and hope dispatch can hear them. Dispatch staff is untrained and not allowed to enter the cells without a deputy present. While the detention center is empty about half the time, during the other half, prisoners are kept in unsafe conditions without adequate monitoring.

Some detention centers, including Roosevelt and Musselshell Counties, have made changes to existing brig jails. For example, the cells in Roosevelt County's "bull pen," which is an old brig, were so small they provided only one-fourth of the square footage per prisoner mandated by detention standards. The "bull pen" consisted of five 42-square-foot bunks housing four people each. Standards require 35 square feet per prisoner. The 20 prisoners who lived in these extremely cramped conditions all shared one toilet and shower. There were no lights in these tiny cells. Although the brig is still in use, three bunks for each cell in the bull pen were cut out in spring 2013, five years after a consultant alerted Roosevelt County to this deficiency.⁹⁷ Also in 2013, Musselshell County removed its brig jail completely and replaced it with a large dormitory room.

⁹⁶ The Counties are Granite, Meagher, Roosevelt, and Wheatland. We did not tour several smaller detention centers, including those in Fallon, Powder River, and Park Counties, which may or may not use brig jails. We also did not tour most 72-hour hold facilities, which may or may not use brig jails. We are aware of at least one 72-hour facility—Liberty County that uses brig jails.

⁹⁷ In November of 2014, the voters of Roosevelt County approved a bond issue to build a new detention facility. http://billingsgazette.com/news/state-and-regional/montana/detention-facilities-on-ballot-in-bakken-region-only-passes/article_d5bc329a-fc41-55d2-996a-74f05485e98a.html

Brig jails are dated vestiges of old war ships and they need to be relegated to history. Brig jails violate human dignity and the Eighth Amendment, which guarantees constitutional conditions of confinement. The only things they should be used for are storage and as a reminder of dated and unacceptable methods of confinement.

RECOMMENDATIONS

- **Update antiquated and unsafe detention centers to comply with MACo and ACA standards and fire and sanitation codes.**

SANITATION AND PLUMBING

LEGAL STANDARDS

A sanitary environment is a basic human need that detention centers must provide for every prisoner.⁹⁸ The Eighth Amendment requires proper cleaning of detention facilities and adequate garbage disposal.⁹⁹

Detention centers must maintain adequate and operable plumbing that does not risk conveying waterborne disease or vermin infestation.¹⁰⁰ They must provide adequately functioning toilets,¹⁰¹ and prisoners must have access to them.¹⁰² In sanitation cases, courts specifically scrutinize proximity to human waste in sanitation cases, even if brief in duration.¹⁰³

Inadequate or excessive heat also violates the Eighth Amendment.¹⁰⁴

Both MACo and ACA standards require detention centers to be clean and in good repair and to control all vermin and pests.¹⁰⁵ Detention centers must have a potable water supply that is certified annually by an independent source to assure compliance with laws and regulations. Both standards require that prisoners are given articles (toilet paper, sanitary napkins, etc.) and services necessary for maintaining personal hygiene, including access to showers, toilets, and washbasins that function properly and have temperature controlled water available 24 hours a day. Prisoners must be able to access the toilets 24 hours a day without staff assistance. Detention centers must provide one toilet for every 12 male prisoners and one for every eight females.

“This jail is filthy and disgusting. It[']s literally like a dungeon. There is visible mold and grim[e] throughout the jail. Air is stagnant and all of us are stuffy.”

–Male Prisoner in Lake County Detention Center

⁹⁸ Toussaint v. McCarthy, 801 F.2d 1080 (9th Cir. 1986).

⁹⁹ Gates v. Cook, 376 F.3d 323 (5th Cir. 2004); Hoptowitz v. Spellman, 752 F.2d 779 (9th Cir. 1985).

¹⁰⁰ Benjamin v. Fraser, 343 F.3d 25 (2d Cir. 2009); Carty v. Farrelly, 957 F. Supp. 727 (D.V.I. 1997).

¹⁰¹ Toussaint v. Rushen, 722 F.2d 1490 (9th Cir. 1984).

¹⁰² Miller v. King, 384 F.3d 1248 (11th Cir. 2004).

¹⁰³ DeSpain v. Uphoff, 264 F.3d 965 (10th Cir. 2001); Johnson v. Lewis, 217 F.3d 726 (9th Cir. 2000).

¹⁰⁴ Wilson v. Seiter, 501 U.S. 304 (1991).

¹⁰⁵ MACo Standard 10.02 and ACA Standard 1-CORE-1A-04.

SANITATION AND PLUMBING ISSUES IN MONTANA DETENTION CENTERS

Prisoners reported severe sanitation and plumbing issues in Big Horn, Hill, Yellowstone and Glacier Counties, including lack of overall cleanliness, inadequate plumbing, and extensive mold. The three detention centers in which prisoners reported the fewest sanitation issues were Park, Gallatin, and Sanders Counties. (See Appendices K and L.)

Many prisoners across the state reported serious ventilation problems in detention centers, resulting in a complete lack of fresh air. Of the counties surveyed, 17 had consistent negative responses regarding poor ventilation and lack of fresh air. Of those 17, five had particularly low prisoner satisfaction. Lake County reportedly had the worst circulation and access to fresh air, followed by Big Horn, Lincoln, Dawson and Cascade Counties. In these counties, prisoners reported respiratory health problems resulting from poor circulation, lack of fresh air, and an abundance of airborne particulates. Sanders County had the best-reported ventilation, with high prisoner satisfaction and no real complaints, followed by Glacier and Mineral Counties.

Related to ventilation, many prisoners reported unreasonably cold detention centers. Twelve of the county detention centers elicited such complaints. Responses were largely unfavorable from prisoners in Big Horn, Glacier, Lincoln, Missoula, and Toole Counties. (See [Appendix H.](#)) Interestingly, in the questions addressing whether detention centers were too hot, not a single county had consistent negative responses, which suggests that prisoners are not arbitrarily complaining about temperatures and that consistent concerns about cold detention centers are likely valid.

Prisoners from five counties consistently reported the presence of mold, and many reported developing respiratory problems.¹⁰⁶ (See [Appendix L.](#)) Additionally, 13 counties—including Beaverhead, Big Horn, Cascade, Fergus, Flathead, Lewis and Clark, Missoula, Park, Ravalli, Roosevelt, Rosebud, Toole, and Yellowstone—had discernible trends in prisoner responses indicating that mold was an issue. Based on prisoner responses, the detention centers with the fewest apparent issues with mold were Glacier, Richland, Gallatin, and Silver Bow Counties.

Prisoner responses from 13 counties had consistent complaints about plumbing. (See [Appendix K.](#)) In more than one detention center, prisoners described that when a neighbor flushed a toilet, their toilets

“Just a week ago we had two large floods in which black water came out of our showers and toilets[.] [W]e were exposed to it for 5 hours and the water also came into our cells. Our sinks don’t have water pressure, barely any water comes out of our sinks.”

—Male Prisoner in Yellowstone County Detention Center

“I have been here for over a year and I [have] not seen any air filter changed in our pod. There’s mold in our showers, cells, and pod ceiling. I now have to take allergy pills because I now have breathing problems.”

—Male Prisoner in Yellowstone County Detention Center

“Whenever the neighbor cell flushes his toilet, toilet paper and fecal matter come into my toilet. It[']s disgusting.”

—Male Prisoner in Gallatin County Detention Center

¹⁰⁶ Big Horn, Lincoln, Lake, Rosebud, and Yellowstone Counties.

would overflow and human waste would spill across the cell floor. In Glacier County, prisoners reported having to share a toilet among numerous prisoners, greatly reducing their accessibility. Prisoners also explained that water levels in toilets were so low that sewer gases were frequently leaking into the cells.

RECOMMENDATIONS

- **Comply with state sanitation and plumbing standards.**
- **Regularly clean entire detention center with an adequate cleaning process and document compliance with standards.**
- **Schedule and document sanitarian inspections and timely address concerns.**

LAUNDRY AND CLOTHING

LEGAL STANDARDS

Failure to provide necessary clothing is a deprivation of a basic need and thus constitutes cruel and unusual punishment.¹⁰⁷ ACA standards require facilities to have “written policy, procedure, and practice [that] provide for the issue of suitable clothing to all inmates.”¹⁰⁸ The comment explains that a “standard wardrobe should be provided at the time of admission, and should include, as appropriate, shirts, blouses, dresses, trousers, skirts, belts, undergarments, slippers, socks, coats, jackets and headwear. In addition to the standard issue of prisoner clothing, civilian attire should be available in limited quantities for leisure, visiting, work release, and furloughs.” Pre-trial detainees have the right to wear civilian clothes to criminal trials¹⁰⁹ and detention centers must provide civilian clothing to indigent defendants.¹¹⁰

Prisoners are entitled to clothing that is clean¹¹¹ and maintained with “adequate laundry facilities.”¹¹² ACA requires that prisoner clothing be exchanged and laundered at least twice a week; MACo requires weekly exchanges. Detention centers must issue clothing that is properly fitted and suitable for the climate.

In addition, both MACo and ACA standards require that prisoners be provided “suitable [and] clean” bedding and linens that are exchanged and laundered at least weekly.¹¹³ MACo requires that blankets are laundered at least monthly and before they are reissued to a new prisoner.

LAUNDRY AND CLOTHING IN MONTANA DETENTION CENTERS

Several detention centers violate legal standards by not providing prisoners with adequate clothing. Beaverhead, Big Horn, Cascade, Lake, Lincoln, Meagher, Musselshell, Park, Pondera, Powder River, Roosevelt and Wheatland Counties do not provide prisoners with any undergarments or socks. Richland County reported it did not provide underwear, but did provide bras and socks. Toole County reported it did not provide or allow bras or socks. Yellowstone County reported it did not provide socks. Not

¹⁰⁷ Farmer v. Brennan, 511 U.S. 825 (1994).

¹⁰⁸ ACA Standard 4-4336.

¹⁰⁹ Estelle v. Williams, 425 U.S. 501 (1976).

¹¹⁰ Felts v. Estelle, 875 F.2d 785 (9th Cir. 1989).

¹¹¹ Shannon v. Graves, 257 F.3d 1164 (10th Cir. 2001).

¹¹² Divers v. Dep’t of Corr., 921 F.2d 191 (8th Cir. 1989).

¹¹³ MACo Standard 10.08 and ACA standard 1-CORE-4B-01.

surprisingly, prisoner responses from several of these detention centers had discernable negative trends regarding clothing, with Cascade County having the lowest prisoner satisfaction by a substantial margin. One respondent from Cascade County stated that prisoners in the detention center hope that when other prisoners leave, they themselves can take the departing prisoners' undergarments because they are in such short supply and most prisoners can't afford to purchase them.

Not only is it unconstitutional to deprive prisoners of undergarments and socks, it also has practical problems. Depriving women of bras can result in medical issues for women who need them and robs incarcerated women of dignity. Depriving prisoners of undergarments also creates sanitation issues. Given the large number of detention centers that prisoners report are cold, deprivation of socks is unacceptable. Allowing outside undergarments and socks is not an answer to this issue, as there are safety and security risks with non-uniform clothing in a detention center; tube socks, for example, can lead to suicide. One administrator reported that a prisoner brought in contraband through boxer briefs with a pocket in them.

Lack of adequate undergarments is an issue despite the fact that many prisoners are DOC-sentenced and awaiting placement or incarcerated for DOC parole violations. Montana DOC policy requires DOC detention centers to provide "appropriate" clothing to newly admitted prisoners, which DOC has interpreted to include bras, socks and underwear, inasmuch as it provides these items to all prisoners in its facilities.¹¹⁴ Some of these detention centers sell undergarments through the commissary, which is little help to most indigent pre-trial detainees. Many detention centers in rural areas rely heavily on family to bring in undergarments for prisoners, and do not maintain an adequate supply of clothing. Seven counties scored notably low in response to our questionnaire regarding clothing and laundry. The questionnaire addressed both quality of clothing, and whether or not an adequate amount was provided, including querying if prisoners did not have enough money to purchase clothing.

In regard to adequacy of clothing, Gallatin, Lake, and Lincoln Counties had the lowest scores. (See [Appendix N](#).) For clothing cleanliness and quality, which took into account quality of clothing and detention center laundry procedures, Flathead County had the lowest score, followed by Cascade, Big Horn, and Lake Counties. (See [Appendix M](#).) An overall metric that measured overall adequacy of laundry and clothing had Cascade as the lowest scoring county, followed by Lake, Big Horn, and Yellowstone Counties.

Three detention centers had better prisoner responses indicating adequate clothing and laundry, including Mineral, Lincoln, and Sanders Counties. Prisoners reported they are provided clean clothes when they arrive, and are given clothing, including undergarments, even if they cannot afford it.

"You get 1 shirt 1 pants every 7-9 days. We don't get socks or underwear so if you don't have money you pretty much freeze. They wash personals once a week. You never get new blankets or able to wash them. I've been here since December 7th 2012 and then never washed or gave me a new blanket yet and today is April 26th 2013."

-Male Prisoner in Cascade County Detention Center

¹¹⁴ Montana Department of Corrections Policy 4.4.1E.

RECOMMENDATIONS

- As a matter of course, provide all prisoners with undergarments, including underwear, bras, and socks without charge.
- Provide new clothing when existing clothing wears out.
- Adequately launder clothing several times a week and blankets weekly.

VISITATION

LEGAL STANDARDS

Detention Centers may not permanently revoke a prisoner’s visitation rights or allow visiting in an arbitrary or discriminatory manner.¹¹⁵ Courts have intervened where county detention centers provided limited visiting opportunities or imposed oppressive conditions.¹¹⁶ Prisoners are afforded extra protection in their ability to visit with legal counsel because it is associated with their right to access the courts.¹¹⁷ A prisoner’s rights are violated if their visits with counsel are “arbitrarily abridged” or limited.¹¹⁸

Courts have struck down sweeping prohibitions of children visiting as well as visitation rules that bar same-sex visitation or displays of affection.¹¹⁹ As explained by one court, a “ban on child visitation is an excessive response to the limited risk presented by child visitation in these particular facilities, and therefore not reasonably related to a legitimate governmental objective, influenced as we are by the fundamental nature of the rights between parent and child and the interest of the state in maintaining that delicate relationship.”¹²⁰

MACo standards require that every detention center have a written policy and procedure governing visits and to make special arrangements when a visit cannot “reasonably coincide” with regular hours.¹²¹ Detention centers must provide a secure and suitable area for prisoners and visitors to converse at regular voice levels. ACA standards require that the number of visitors a prisoner may receive and the length of the visits be limited only by the detention center’s schedule, space, and personnel constraints.¹²² Any policies that deny visits or require visitors to be searched must be defined in writing.

Detention Centers are also required to provide prisoners with adequate opportunities to meet confidentially with attorneys and clergy, including meeting at times other than regular visiting hours. Montana law protects prisoners’ right to visit alone and in private with any practicing attorney in the state whom they so desire alone and in private.¹²³ Case law establishes that the right to communicate with lawyers is not limited to those formally represented by an attorney, but also for “prisoners

¹¹⁵ *Overton v. Bazzetta*, 539 US 126, 137 (2003); *Lee v. Crossroads Correctional Center*, 312 Mont. 522 (2002); *Thorne v. Jones*, 765 F.2d 1270 (5th Cir. 1985).

¹¹⁶ *Morrow v. Harwell*, 768 F.2d 619 (5th Cir. 1985).

¹¹⁷ *Bounds v. Smith*, 430 US 817 (1977); *Ching v. Lewis* 895 F.2d 608 (9th Cir. 1990).

¹¹⁸ *Ching v. Lewis*, 895 F.2d 608, 610 (9th Cir. 1990).

¹¹⁹ *Id.*; *Whitmire v. State of Arizona*, 298 F.3d 1134 (9th Cir. 2002).

¹²⁰ *In re Smith*, 112 Cal.App.3d 956, 169 Cal. Rptr. 564, 570 (Cal.App.2 Dist. 1980). See also *Buie v. Fones*, 717 F.2d 925, 929 (4th Cir. 1983) (concurring opinion) (“... [T]hose who operate detention facilities, whether in the form of local jails or prisons, should be aware that the absolute prohibition on visitation by a detainee’s minor children . . . is almost certainly unconstitutional.”)

¹²¹ MACo Standards 14.10 & 14.14.

¹²² ACA Standard 1-CORE-5B-01.

¹²³ Mont. Code Ann. § 37-61-418

seeking any form of legal advice or assistance.”¹²⁴ Detention centers may never restrict prisoners from communicating with counsel of record in criminal cases¹²⁵ or legal staff of prisoners’ rights groups and other advocacy organizations.¹²⁶ Prisoners’ First Amendment right to consult an attorney for legal advice “protects the right of an individual or group to consult with an attorney on any legal matter.”¹²⁷ Detention centers may not adopt policies that prevent contact visits with attorneys.¹²⁸

VISITATION IN MONTANA DETENTION CENTERS

Every county detention center in Montana allows for visitation either two or three days a week; sessions last anywhere from 15 minutes to an hour. In some cases, detention centers in Montana lack formal visiting policies, have inadequate visiting areas, and have broken phones for non-contact visits. Although the detention centers allow for visitation, some limit prisoners’ ability to visit with minors or people outside of their immediate family. Based on prisoner responses, six counties (Beaverhead, Cascade, Dawson, Fergus, Lewis and Clark, and Rosebud) had scores indicative of sub-par performance. (See [Appendix P](#).) Fergus County had the lowest score by a substantial margin; this correlates with its prior policy prohibiting prisoners from visiting children or people who are not in their immediate family. That policy has now been changed to allow visits from children.¹²⁹

Several detention centers provide prisoners adequate access to friends and family. Toole County prisoners responded most positively to questions regarding visitation, followed by Sanders, Mineral, Jefferson and Big Horn Counties. Of these detention centers, most allowed visitation three times a week, while Toole County allows visitation every day.

RECOMMENDATIONS

- **Adopt and implement visiting policy that provides regularly scheduled visits and as-needed visits.**
- **Ensure confidential visitation with clergy and legal representatives.**
- **Allow visitation with children and non-immediate family members.**
- **Ensure adequate visiting space with physical plant conditions, including functioning phones.**
- **Keep written log of any denials of visitation and reasons for denial.**

MAIL AND PHONE COMMUNICATION

LEGAL STANDARDS

Prisoners have a First Amendment right to communicate by both mail and phone,¹³⁰ and ACA and MACo standards require that detention centers have written policies and procedures that govern prisoner communication.¹³¹

¹²⁴ Ruiz v. Estelle, 503 F. Supp. 1265, 1372 (S.D.Tex. 1980), aff’d in pertinent part, rev’d on other grounds 679 F.2d 1115, 1153-55 (5th Cir. 1982).

¹²⁵ Id.

¹²⁶ Abel v. Miller, 824 F.2d 1522 (7th Cir. 1987); Jean v. Nelson, 711 F.2d 1455, 1508-09 (11th Cir. 1982), on rehearing, 727 F.2d 957 (11th Cir. 1984) (en banc), rev’d on other grounds, 472 U.S. 846 (1985); Dreher v. Sielaff, 636 F.2d 1141, 1145 (7th Cir. 1980).

¹²⁷ Denius v. Dunlap, 209 F.3d 944, 954 (7th Cir. 2000).

¹²⁸ Ching v. Lews, 895 F.2d 608, 610 (9th Cir. 1990); Office of the State Public Defender v. McMeekin, 354 Mont. 130, 224 P. 3d 616, 2009 MT 439

¹²⁹ Fergus County has adopted the MACo jail standard on this issue.

¹³⁰ Morrison v. Hall, 261 F.3d 896 (9th Cir. 2001); Johnson v. State of Cal., 207 F.3d 650 (9th Cir. 2000).

¹³¹ MACo Standards 14.02 and 14.07 and ACA Standards 1-CORE-5B-02 and 1-CORE-5B-03.

Outgoing mail has a greater expectation of privacy than incoming mail, and searches are allowed only if “necessary or essential.”¹³² Detention centers may not prohibit prisoners from writing religious leaders.¹³³ ACA and MACo standards protect prisoners’ rights to send and receive mail from courts, counsel, and officials of confining authority and detention center officials may not censor letters or punish prisoners who criticize prison conditions or personnel.¹³⁴ Mail to and from attorneys, courts, paralegals, and legal organizations may not be read in the ordinary course of detention center routines, as the right to such correspondence is constitutionally protected.¹³⁵ Standards and case law maintain that prisoners must know when mail is rejected, and receive a “reasonable opportunity to protest” and refer a complaint to someone other than the censor.¹³⁶ Privileged mail may be searched for contraband, but only in the presence of the prisoner.¹³⁷

Courts have held there is a constitutional right to prompt mail delivery,¹³⁸ and any impediment or restriction on these rights must be supported by a clearly articulated penological justification.¹³⁹

Core jail standards and courts maintain that if a prisoner is indigent, s/he must be provided pen and paper to draft legal documents and funds for both notary services and stamps.¹⁴⁰ Policies requiring indigent prisoners to choose between personal hygiene supplies and legal supplies are “unacceptable.”¹⁴¹

Standards require that prisoners be provided an opportunity to make telephone calls and maintain family ties. Prisoners must be afforded the opportunity to communicate via telephone with their attorney. New prisoners are allowed at least one call during the admission process and must be assisted in notifying people of their detainment.

The U.S. Federal Trade Commission recently took a long overdue step by implementing regulations limiting exorbitant pricing of interstate phone calls in American prisons and detention centers. Previously, the cost of a 15-minute interstate phone call averaged as much as \$17. The regulation aimed to make the price of calls “just, reasonable, and fair.” The regulations include an interim rate cap at 21 cents per minute for debit and pre-paid calls, 25 cents per minute for collect calls and “safe-harbor” rates of 12 cents and 14 cents per minute, respectively. These regulations reduce the cost of a 15-minute phone call from \$17 to \$2-\$3.¹⁴² Similar caps and reforms are sorely needed in Montana for intra-state calls from detention centers and prisons.

¹³² *Thornburg v. Abbott*, 490 U.S. 401, 408 (1989); *Barrett v. Belleque*, 544 F.3d 1060, 1062 (9th Cir. 2008).

¹³³ *Walker v. Blackwell*, 411 F.2d 23 (5th Cir. 1959).

¹³⁴ MACo Standard 14.04 and ACA Standard 1-CORE-5B-02. *Procnier v. Martinez*, 416 U.S. 396 (1974).

¹³⁵ *Kaufman v. McCaughty*, 419 F.3d 678 (7th Cir.2005); *Reneer v. Sewell*, 975 F.2d 258 (5th Cir. 1992).

¹³⁶ *Wheel v. U.S.*, 640 F.2d 1116 (9th Cir. 1981); *Procnier*, 416 U.S. at 418.

¹³⁷ *Royse v. Super. Ct. of State of Wash.*, 779 F.2d 573 (9th Cir. 1986).

¹³⁸ *Zimmerman v. Tribble*, 226 F.3d 568 (7th Cir. 2000).

¹³⁹ *Smith v. Erickson*, 961 F.2d 1387 (8th Cir. 1992).

¹⁴⁰ *Bounds v. Smith*, 430 U.S. 817 (1977).

¹⁴¹ *Gluth v. Kangas*, 951 F.2d 1504 (9th Cir. 1991).

¹⁴² Rates for Interstate Inmate Calling Services, 78 Fed. Reg. 219 (May 31, 2013) (to be codified at 47 C.F.R. pt. 64).

MAIL AND PHONE COMMUNICATION IN MONTANA DETENTION CENTERS

Many detention centers charge exorbitant rates for prisoner phone calls. One prisoner reported paying \$2.95 for a local call and \$15 for long distance calls, in addition to a surcharge, resulting in a \$25 cost for a phone call to his family. In one Montana detention center, a private phone provider charges \$3.95 per transaction per phone number even to put money on an account. Then, it charges a \$4.95 connection fee per call. Once connected, prisoners are charged 88 cents a minute if the call is out of state. Prisoners report this lack of phone access results in alienation from a support system and that makes rehabilitation and re-entry into society more difficult. Several prisoners also reported mail to and from the ACLU of Montana was held for inordinately long periods of time and, in some cases, was never delivered.

RECOMMENDATIONS

- **Deliver all mail to prisoners in a timely manner and never censor mail involving attorneys or advocacy groups.**
- **Notify prisoners when mail is withheld or delayed.**
- **Regulate exorbitant pricing schemes for jail telephone calls.**

LAW LIBRARY ACCESS

LEGAL STANDARDS

Detention centers must provide adequate law libraries or legal assistance to prisoners.¹⁴³ This includes giving prisoners the capability of “bringing challenges to sentences or conditions of confinement before the courts.”¹⁴⁴ In general, physical access to a law library is required.¹⁴⁵ A library alone, however, does not provide adequate legal access to prisoners who are illiterate, poorly educated, or non-English-speaking.¹⁴⁶ If prisoners who are segregated from the general population are denied physical access to a library, they must receive additional assistance from a legally trained person or be provided legal materials.¹⁴⁷

MACo and ACA standards require all prisoners have access to library services, and that a qualified staff member coordinate and supervise the library services.¹⁴⁸ There must be written policy, procedures, and practices that provide prisoners with reasonable access to legal materials if there is not free legal assistance with criminal matters. Prisoners are also required to have reasonable access to paper and other supplies or services that are related to legal matters.

LAW LIBRARIES IN MONTANA DETENTION CENTERS

Many prisoners reported inadequate access to legal materials or counsel. Some detention centers, such as Dawson, Broadwater and Powder River reported having no law library whatsoever. The administrators at each of these detention centers stated that if a prisoner has a specific statute or regulation s/he wants to view, staff will pull it up on the computer and give it to her/him. This approach assumes that every prisoner knows the provision s/he would like to review and it omits, for instance, treatises or case law from a prisoner’s research options.

¹⁴³ *Bounds v. Smith*, 430 US 817 (1977); *Leeds v. Watson*, 630 F.2d 674 (9th Cir. 1980).

¹⁴⁴ *Lewis v. Casey*, 518 US 343 (1996).

¹⁴⁵ *Toussaint v. McCarthy*, 801 F.2d 1080 (1986).

¹⁴⁶ *Lindquist v. Idaho State Board of Correction*, 776 F.2d 851 (9th Cir. 1985).

¹⁴⁷ *Toussaint v. McCarthy*, 926 F.2d 800 (9th Cir. 1991); *Wood v. Housewright*, 900 F.2d 1332 (9th Cir. 1990).

¹⁴⁸ MACo Standard 17.09 and ACA Standards 1-CORE-5C-04 and 1-CORE-6A-03.

The majority of detention centers have only one hard copy set of Montana Code Annotated, which is often outdated. With the exception of Missoula, Cascade, Yellowstone, and Gallatin Counties, counties had no online legal research database available. In Fergus County, the “law library” consisted of outdated codes and a 20-year old Black’s Law Dictionary.¹⁴⁹

Problematically, Missoula, Lincoln and Cascade Counties reported they do not provide prisoners access to a law library if they are represented by a criminal defense attorney or public defender. Several prisoners at Gallatin County also reported the detention center gives priority access to self-represented prisoners, resulting in limited or no access for represented prisoners. The flaw in this approach is that public defenders generally do not have the time or resources to research conditions issues, such as access to adequate mental health treatment. Further, an underfunded public defender system means already over-extended public defenders often do not have the capacity to provide timely assistance. Regardless, even with regard to legal representation, prisoners have the right to conduct independent research.

“It can take a person several weeks or months to get law books and then you have to return them in one week. Whereas I have been trying to get MCA Book #4 and #7 for the past three months, still can’t get it. I even asked for your help and can’t get it, the [w]hole system needs help.”

–Male Prisoner in
Yellowstone County
Detention Center

Many prisoners reported waiting months between requesting a law book and actually receiving it, only to find that the copy they received was outdated. Prisoner responses from six counties (Big Horn, Cascade, Dawson, Lincoln, Missoula and Rosebud) reported extremely limited access to both legal books and a law library. (See [Appendix Q](#).) Many detention centers scored very low on access to law libraries, but with considerably higher scores in regard to prisoners’ access to legal books and materials (Broadwater, Hill, Richland and Yellowstone).

In Cascade County, many prisoners grieved the complete lack of legal materials and a law library. In response, administrators gave the same denial verbatim, telling the prisoners, “You have the ability to contact a public defender, use a regular kite.” Prisoners reported having the most access to legal materials and a law library in Toole and Jefferson Counties, followed by Beaverhead, Flathead and Mineral Counties.

RECOMMENDATION

- **Ensure access to law library for all prisoners, whether represented or pro se, including current statutes, treatises on criminal law and detention conditions, and any other relevant legal information.**

FOOD

LEGAL STANDARDS

Montana detention centers have a statutory obligation to provide prisoners with “necessary food, clothing, and bedding.”¹⁵⁰ Food is a basic necessity of life that is protected by the Eighth Amendment,

¹⁴⁹ Fergus County is working to create an improved law library.

¹⁵⁰ Mont. Code Ann. § 7-32-2205.

and must be “adequate to maintain health.”¹⁵¹ Any deprivation of food can violate the Eighth Amendment and can be construed as a “form of corporal punishment.”¹⁵² The deprivation of “essential food,” even for a brief period of time, may be a constitutional violation.¹⁵³ Detention centers are obliged to maintain the prisoner health, and a diet causing “notable weight loss and mildly diminished health” is unconstitutional.¹⁵⁴ If prisoners have unique dietary needs confirmed by a medical professional, detention centers have a constitutional obligation to comply.¹⁵⁵ Ignoring or not taking these needs seriously violates the Constitution.¹⁵⁶

MACo and ACA Standards require that a nutritionist or dietician review detention centers’ dietary allowances at least annually to ensure compliance with nutrition needs of appropriate age groups.¹⁵⁷ NCCHC standards also require detention centers to provide medical diets that enhance patients’ health and modify them when necessary to meet clinical conditions.¹⁵⁸ Food service staff must conduct quarterly evaluations to verify adherence to the daily serving requirements. Therapeutic and special diets, if approved by a local dietician or the facility administrator for either medical or religious reasons, must be followed. Detention centers must maintain records of all meals served as well as the results of semi-annual sanitation inspections by a qualified health officer.

Detention centers must serve three meals, including two hot, every 24-hour period, with no more than 14 hours between dinner and breakfast. The facility administrator, food service personnel, or an employee who is familiar with food service sanitation requirements, must conduct a daily inspection of food service areas and equipment. Food should never be withheld from prisoners as a disciplinary action.

FOOD IN MONTANA DETENTION CENTERS

Our investigation revealed food, including a grievance procedure for meals, is an issue in which improvements and effort by detention center staff go a very long way toward prisoner morale. Adequate portions and quality food, including fresh and healthy food, are of paramount importance to prisoners. Food service options include using in-house kitchens, the kitchen facilities of nearby hospitals or assisted living centers, or contracting with a private company to provide food.

Based on prisoner responses, half of the detention centers had discernable trends suggesting there was some problem with the food. Negative responses

“I’m starving!!! I came in jail under weight by 4 pounds and I’ve been here 5 weeks and lost another 12 pounds and still losing weight! That is the number one reason and problem in the jail is that the food is very little and we go to bed hungry. The variety is very little.”

—Male Prisoner in Silver Bow County Detention Center

¹⁵¹ Keenan v. Hall, 83 F.3d 1083 (9th Cir. 1996).

¹⁵² Reed v. McBride, 178 F.3d 849 (7th Cir. 1999); Cooper v. Sheriff, Lubbock County, Tex., 929 F.2d 1078 (5th Cir. 1991).

¹⁵³ Rhodes v. Chapman, 452 U.S. 337, 347 (1981); Green v. Johnson, 977 F.2d 1383 (10th Cir. 1992); Woods v. Thieret, 903 F.2d 1080 (7th Cir. 1990).

¹⁵⁴ Hazen v. Paslet, 768 F.2d 226 (8th Cir. 1985).

¹⁵⁵ Sellers v. Henman, 41 F.3d 1100 (7th Cir. 1994).

¹⁵⁶ Lolli v. County of Orange, 351 F.3d 410 (9th Cir. 2003).

¹⁵⁷ MACo Standard 9.03 and ACA Standard 1-CORE-4A-01.

¹⁵⁸ NCCHC Standard J-F-02.

consistently focused on either unsanitary preparation or lack of nutrition and diversity. The presence of foreign objects in the food was noted in several facilities, as was a complete lack of fresh fruits and vegetables. Perhaps the most egregious example of the lack of fresh food is Musselshell County, in which all meals are microwaved and pre-packaged.

Prisoners were not hesitant to commend good quality food in their responses. Several detention centers received positive feedback about the food from prisoners, while one facility—Sanders County—stood out as offering exemplary food and food service. Not only did Sanders County score high on statistical measures, but one of the prisoners commended the staff and Sanders County for the high quality of food, as well as for going “above and beyond to help inmates.” Fergus, Mineral, Park, and Toole Counties all received positive feedback about the food, both in regard to quantity and quality.

The most consistent negative reporting trend related to the amount of food. (See Appendix R.) The five counties that scored the lowest in quantity of food were Silver Bow, Glacier, Cascade, Richland, and Big Horn Counties. In detention centers with consistent negative reporting from prisoners, prisoners reported being provided insufficient amounts of food, going to bed hungry and generally not being adequately fed. Others explained staff were unwilling to cooperate with prisoners’ unique dietary needs. One respondent said that if a prisoner is allergic to a food, s/he is told either to eat it or go without. Many respondents reported relying on the commissary to supplement meager rations, a luxury that not all pre-trial detainees can afford and that is not available in several smaller detention centers. In Yellowstone County, prisoners reported that the same company provided meals and ran the commissary; the majority speculated that providing low quantities of food was an effort to increase commissary revenue.

“If a person is allergic to a food item, the inmate is either forced to go without or is forced to eat the item, the jail does not offer a substitute.”

—Male Prisoner in Lewis and Clark County Detention Center

Eight counties had large numbers of prisoners reporting inadequate food overall, including Glacier, Silver Bow, Cascade, Big Horn, Richland, Lake, Yellowstone and Lincoln counties. Of these eight, Big Horn, Cascade, Glacier and Silver Bow Counties had scores that were considerably lower regarding a combined metric that considered both variety and quantity of food. (See [Appendices R](#) and [S](#).) In regard to variety, many of the same counties appeared to be inadequate. Big Horn County scored significantly lower than any of its counterparts, followed by Glacier, Lake, Cascade and Richland Counties. Sanders County again scored substantially better than any other county in the state. (See [Appendix T](#).)

RECOMMENDATIONS

- Regularly provide appropriate amounts of nutritionally adequate food, including fresh fruits and vegetables.
- Conduct annual nutritional reviews by a dietician.
- Meet medical and religious dietary needs.
- Provide an adequate amount of fruit and vegetable servings.
- Conduct regular kitchen inspections.

GRIEVANCE PROCEDURES

LEGAL STANDARDS

Prisoner grievances filed through an official procedure are constitutionally protected by the First Amendment.¹⁵⁹ The First Amendment protects prisoners from retaliation stemming from their exercising their freedom of speech through filing grievances.¹⁶⁰

Exhausting the applicable grievance procedure is a prerequisite for prisoners to bring a federal claim regarding confinement. The process begins with an initial complaint or grievance from a prisoner, which a staff member then reviews. Most grievances receive a rubber-stamp rejection, sometimes leaving the prisoner with the option to appeal. All grievances should have at least one level of appeal. For a prisoner to be able to effectively exhaust the process and qualify for a federal suit, appeal forms must be made available to them. Prisoners must be given a reasonable amount of time to appeal.

Many detention centers are able to quash viable federal claims by making appeals forms inaccessible and giving prisoners an unreasonably short time to file the appeal. If the prisoner does not appeal on time, s/he would not be able to bring a claim in federal court, regardless of the merits of the complaint or egregiousness of conditions.

An effective grievance procedure requires staff who timely address the grievance and investigate reported problems. A good grievance system opens communication between staff and prisoners and encourages the detention centers to operate safely and fairly.

Both MACo and ACA standards require that detention centers provide prisoners with a grievance procedure that includes at least one level of appeal.¹⁶¹ The NCCHC standards also require a grievance mechanism to address prisoners' complaints about health services.¹⁶²

GRIEVANCE PROCEDURES IN MONTANA DETENTION CENTERS

Most Montana detention centers have grievance procedures and a good grievance procedure goes a long way toward improving prisoner morale. Most prisoners, however, see many grievance procedures as futile and meaningless. Reports from prisoners from almost every detention center cited a grievance system that never resulted in tangible results. With the exception of the strong praise for Sanders County, grievance procedures across the state appear seriously ineffective. The result is a large group of prisoners who become disillusioned not only with the grievance procedure, but the detention center as a whole. This skepticism creates chasms between the prisoners and the detention staff that likely increase hostility between the two groups and diminishes communication and cooperation that would enable the detention center to operate more effectively.

“All there is, is a piece of paper like this one, you fill it out and it disappears, no responses, no record, no copy, gone, like it never happened.”

—Male Prisoner in Richland County Detention Center

¹⁵⁹ *Hoskins v. Lanear*, 395 F.3d 372 (7th Cir. 2005) (per curiam).

¹⁶⁰ *Crawford-El v. Britton*, 523 U.S. 574 (1998); *Farrow v. West*, 320 F.3d 1235 (11th Cir. 2003).

¹⁶¹ MACo Standard 12.02 and ACA Standard 1-CORE-6B-01.

¹⁶² NCHCC Standard J-A-11.

According to prisoners, most detention centers do not respond to the majority of grievances. Prisoner responses demonstrate six counties—Broadwater, Cascade, Lake, Lincoln, Missoula, and Richland—fall below the already low bar set by other detention centers in the state, with Cascade County having the worst grievance system in the state, by a considerable margin. (See [Appendix U](#).) Very few counties have effective grievance procedures. However, Sanders County ranked significantly higher than all other counties. When asked if he had filed a grievance before, one prisoner from Sanders County responded, “No, no need!”

Prisoners across Montana echoed the sentiment about the grievance procedures. The vast majority did not receive timely responses, while many did not receive a response at all. Twenty-four detention centers had discernable trends in prisoner feedback suggesting the grievance procedure is illusory and that staff do not take seriously prisoners’ complaints. Other prisoners voiced concerns about being punished or put in solitary confinement if they used the grievance process. Many prisoners pointed out the obvious problems of writing a grievance that is read and reviewed by members of detention center staff.

RECOMMENDATIONS

- **Implement adequate and functional grievance procedures.**
- **Never threaten punishment or actually punish prisoners for grieving.**
- **Develop effective appeals procedures and inform prisoners of them.**

CONCLUSION

Montana’s jails are in crisis. Our county jails face many of the same issues that detention centers across the country experience. Under-funded and inadequate facilities are forced to grapple with unmanageably large populations for decades. Outdated facilities, inadequate staff, overcrowding, insufficient medical and mental health care, and criminal justice policies geared towards mass incarceration are common to county corrections nationwide. The consequences of these factors can be devastating to individuals and costly to society. Rather than identifying and treating health problems, including mental health and addiction, and providing detainees with the care they need, our detention centers operate as warehouses not only for those convicted of crimes, but also for pre-trial detainees who are presumed to be “innocent until proven guilty.”

In addition to improving conditions and care for prisoners, counties have an opportunity to rethink the role of detention centers as simply a place to warehouse prisoners. Many of the problems that plague county detention centers are associated with too many prisoners being housed because they cannot afford bail. Counties across the state could benefit from a more effective pre-release risk assessment process and a more responsive bail system. By being more judicious about which individuals they choose to detain, counties could save a substantial amount of money in the long run. Further, by adopting innovative approaches to criminal justice, counties could decrease recidivism by shifting to a treatment modality for certain populations and crimes which improves public safety in the community as a whole.

[In response to being asked if he is satisfied with the grievance procedure] “No – [the officer] doesn’t care[,] he turns down everyone.”

–Male Prisoner in Cascade County Detention Center

“The entire system is a sick joke a grievance system ran by those you grieve – good luck.”

–Male Prisoner in Ravalli County Detention Center

Across the state, many prisoners in county detention centers report inadequate medical and mental health care. Medicine was inaccessible to many and, in some instances, health care appeared to be woefully inadequate. With a high percentage of prisoners suffering from mental illness,¹⁶³ the consequences and dangers of inadequate mental health care cannot be overstated. The prevalence of mental illness among prisoners, paired with the barbaric use of solitary confinement in many detention centers, can have devastating results.

Another trend is a complete lack not only of outdoor exercise, but even sunlight and fresh air. Prisoners across the state reported being kept inside for months at a time, in some cases even more than a year. Some prisoners reported they are unable to see natural light through a window or breathe any fresh air for extended periods of time.

Based on prisoner responses, almost every detention center in Montana has an illusory and ineffective grievance system. Most prisoners who report grievances never receive a response, and those who do receive responses typically get a rubber stamp rejection of their requests. This creates a further divide between prisoners and staff, and fosters deep resentment in prisoners.

While detention centers in Montana's rural and urban areas share many of the same problems, each also has unique challenges. In the most rural areas of Montana, detention centers' physical plants are woefully inadequate, including faulty plumbing, excessive mold, and antiquated infrastructure that jeopardizes prisoner safety. In addition, many rural detention centers have insufficient detention staff, particularly female staff. Outdated physical designs, coupled with lack of staff, makes supervision challenging and puts prisoners in danger of suicide or attack by another prisoner. Lengths of stays in rural jails are generally much shorter, however, and there is less overcrowding in these facilities.

In Montana's more populated areas, a variety of issues were seen, including inadequate staffing and deprivation of basic necessities. Many medium and larger detention centers in Montana are dangerously overcrowded. The largest detention centers tend to be the most overcrowded, suggesting that continuing to build ever-larger detention centers is not a solution to swelling pre-trial populations. Instead, the time is ripe for Montana counties to look closely at pre-trial detention alternatives, such as work-release programs and community monitoring.

The phenomenal cost of the criminal justice system has taken its toll on all levels of governance. In many ways, county detention centers bear the brunt of the inefficacies of the justice system. Given the financial constraints many counties experience, meaningful detention center and criminal justice reform are not only morally justifiable, but also financially necessary.

¹⁶³ Steadman, H. J., Osher, F.C., and Robbins, P.C., et al., "Prevalence of Serious Mental Illness among Jail Inmates," *Psychiatric Services* 60, (June 2009). See also Bureau of Justice Statistics Special Report September 2006, *Mental Health Problems of Prison and Jail Inmates*, <http://www.bjs.gov/index.cfm?ty=pbdetail&iid=789>

APPENDIX A PRISONER QUESTIONNAIRE



Name: _____ Jail _____ Date: _____

Please select whether you Strongly Disagree, Disagree, Agree, or Strongly Agree with the following statements.

- | | Strongly Disagree | Disagree | Neutral | Agree | Strongly Agree |
|---|-------------------|----------|---------|-------|----------------|
| 1. There is enough lighting in my room to read or write. | ○ | ○ | ○ | ○ | ○ |
| 2. I see an adequate amount of natural light while I am in my cell. | ○ | ○ | ○ | ○ | ○ |
| 3. The scheduling of lighting in the jail is consistent and fair. | ○ | ○ | ○ | ○ | ○ |
| 4. The jail is very stuffy, and there is not enough fresh air. | ○ | ○ | ○ | ○ | ○ |
| 5. There is visible mold in or around my cell. | ○ | ○ | ○ | ○ | ○ |
| 6. I frequently have allergic reactions to materials in the jail. | ○ | ○ | ○ | ○ | ○ |
| 7. It is often too hot in my cell. | ○ | ○ | ○ | ○ | ○ |
| 8. It is often too cold in my cell. | ○ | ○ | ○ | ○ | ○ |
| 9. The temperature in my cell is comfortable. | ○ | ○ | ○ | ○ | ○ |
| 10. It is often too hot in the entire jail. | ○ | ○ | ○ | ○ | ○ |
| 11. It is often too cold in the entire jail. | ○ | ○ | ○ | ○ | ○ |
| 12. The temperature of the entire jail is comfortable. | ○ | ○ | ○ | ○ | ○ |
| 13. I have access to a working sink and toilet in my room. | ○ | ○ | ○ | ○ | ○ |
| 14. The toilet in my cell functions and rarely has problems. | ○ | ○ | ○ | ○ | ○ |
| 15. The sink in my cell functions and rarely has problems. | ○ | ○ | ○ | ○ | ○ |
| 16. When I shower, the water temperature is good. | ○ | ○ | ○ | ○ | ○ |
| 17. Clean clothing is provided to me at the jail. | ○ | ○ | ○ | ○ | ○ |
| 18. The jail has supplied me with enough clothing. | ○ | ○ | ○ | ○ | ○ |
| 19. The clothing the jail has given me is in decent shape. | ○ | ○ | ○ | ○ | ○ |
| 20. I receive adequate clothing even if I do not have the money. | ○ | ○ | ○ | ○ | ○ |



	Strongly Disagree	Disagree	Neutral	Agree	Strongly Agree
21. The jail offers consistently to wash my clothing.	<input type="radio"/>				
22. I receive three meals a day, every day.	<input type="radio"/>				
23. I receive a sufficient amount of food every day.	<input type="radio"/>				
24. When meals are served in the jail, there is a variety of food.	<input type="radio"/>				
25. I am reluctant to eat food because of the way staff handles it.	<input type="radio"/>				
26. My cell is clean.	<input type="radio"/>				
27. I receive adequate cleaning supplies on a regular basis.	<input type="radio"/>				
28. The jail is clean, including day rooms and recreation areas.	<input type="radio"/>				
29. I receive adequate cleaning supplies upon request.	<input type="radio"/>				
30. I regularly have access to outdoor recreation five days a week.	<input type="radio"/>				
31. I receive fresh air and sunlight in the outdoor recreation area.	<input type="radio"/>				
32. I have enough room to exercise in the outdoor recreation area.	<input type="radio"/>				
33. I have access to indoor recreation five days a week.	<input type="radio"/>				
34. I am allowed to have family and friends visit on a regular basis.	<input type="radio"/>				
35. I am given regular access to my attorney.	<input type="radio"/>				
36. I have access to books to read for fun.	<input type="radio"/>				
37. I have access to books that deal with law.	<input type="radio"/>				
38. I have access to a library.	<input type="radio"/>				
39. I have access to a law library.	<input type="radio"/>				
40. I have electronic entertainment, such as a radio or television.	<input type="radio"/>				
41. I feel safe in my cell.	<input type="radio"/>				
42. I feel safe in the day room.	<input type="radio"/>				
43. I feel safe in the recreation areas.	<input type="radio"/>				
44. The grievance procedure in this jail works.	<input type="radio"/>				
45. This jail is overcrowded.	<input type="radio"/>				
46. More people are housed here than the facility is designed for.	<input type="radio"/>				



GENERAL INFORMATION

Name: _____ Facility: _____

Date Admitted: _____ Expected Departure Date: _____

CONDITIONS

1. Please share any other thoughts or problems you have relating to **lighting** in this jail: _____

2. Please share any other thoughts or problems you have relating to **ventilation and/or mold** in this jail: _____

3. Please share any other thoughts or problems you have relating to **temperature** in this jail: _____

4. Please share any other thoughts or problems you have relating to **plumbing** in this jail: _____

5. Please share any other thoughts or problems you have relating to **clothing and laundry** in this jail: _____



6. Please share any other thoughts or problems you have relating to **food and meals** in this jail: _____

7. Please share any other thoughts or problems you have relating to **sanitation and cleanliness** in this jail: _____

RECREATION/OUT OF CELL TIME

1. Do you have **outdoor** recreation with other inmates or by yourself? _____

2. Do you have **indoor** recreation with other inmates or by yourself? _____

3. Do you receive **jackets** to go to outdoor recreation if needed? _____

4. If you do **not** have access to outdoor recreation, how long has it been since you were last outside? _____

5. How many hours are you allowed out of your cell **in the dayroom** each day? _____

6. How many days per week are you allowed to have a **family or friend visit**? _____

7. What **other activities** do you participate in when **in** your cell? _____

8. What **other activities** do you participate in **outside** of your cell? _____

OVERCROWDING

1. Do you consider this jail **overcrowded**? Is yes, please explain:

2. Are you aware of prisoners sleeping on the floor or in plastic "boats"? If yes, how many and how often?



3. Are prisoners sleeping in the dayroom? If yes, how many and how often?

4. Has your jail's overcrowding caused increased hostility, fights, sanitation issues, or other problems? If yes, please explain:

SUPERVISION/SAFETY

1. How are you supervised in your cell (i.e., occasional walk by, video surveillance, none)? _____

2. If you are supervised by an occasional walk by from an officer, how often do they walk by? _____

3. How are you supervised in the dayroom? _____

MEDICAL AND MENTAL HEALTH

1. Did you have **medical needs** upon entering the jail? If yes, please state what your medical needs were. _____

2. Do you still have medical needs? If yes, what are your current medical needs? _____

3. Do you feel your medical needs have been met in jail? If no, please explain. _____

4. Have you seen a **doctor, nurse or physician's assistant** in jail? _____

5. If yes, **were you satisfied** with the medical care you received? _____

6. If no, did you **kite or grieve** to see medical staff? _____

7. Did you have **mental health needs** upon entering the jail? If yes, please explain. _____

8. Do you still have mental health needs? If yes, please explain. _____

9. Do you feel your mental health needs have been met in jail? If no, please explain. _____



-
-
10. Have you seen **mental health staff** while in jail? _____
11. If yes, **were you satisfied** with the mental health care you received? _____
12. If no, did you **kite or grieve** to see mental health staff? _____
13. Did you take **medication** upon entering jail? If yes, please state what medications you were taking. _____
14. Do you **still take medication**? If yes, please state what medications you are still taking. _____
15. Have you **requested medications** that you have not received? If yes, please list the medications you've requested that you haven't received. _____
16. Have you received **substitute medications** for medications you were previously taking? If yes, please list them. _____

GRIEVANCE PROCEDURE

1. Have you used the grievance procedure? _____
2. Did you receive a **timely response** to your grievance? _____
3. If yes, **were you satisfied** with the outcome of your grievance? _____
4. If no, please explain. _____
5. Is there **an appeal process** if you are unhappy with a grievance response? _____

SHARING OF INFORMATION

Please check one of the following:

____ I consent to the ACLU of Montana sharing my name and the information I provide in this questionnaire with the public.

____ I consent to the ACLU of Montana sharing the information I provide in this questionnaire with the public, but not my name.

____ I do **not** consent to the ACLU of Montana sharing either my name or the information I provide in this

APPENDIX B

SOURCES OF INFORMATION AND METHODOLOGIES

	Questionnaire	Responses	Meeting	Tour
Beaverhead	X	5	In person	X
Big Horn	X	10	Phone	
Broadwater	X	13	In person	
Cascade	X	19	In person	X
Chouteau	X	2	In person	X
Dawson	X	16	In person	X
Deer Lodge	X	4	In person	X
Fallon	X	2	Phone	
Fergus	X	14	In person	X
Flathead	X	17	In person	X
Gallatin	X	30	In person	X
Glacier	X	7	In person	X
Granite			In person	X
Hill	X	3	In person	
Jefferson	X	6	In person	
Lake	X	12	In person	X
Lewis and Clark	X	21	In person	X
Lincoln	X	5	In person	X
Meagher			In person	X
Mineral	X	4	In person	X
Missoula	X	18	Phone	X
Musselshell	X	1	In person	X
Park	X	7	Public Info Request	
Pondera			In person	X
Powder River			Phone	
Powell	X	3	Public Info Request	
Ravalli	X	19	In person	
Richland	X	12	Phone	
Roosevelt	X	4	In person	
Rosebud	X	7	In person	X
Sanders	X	11	In person	X
Silver Bow	X	22	In person	X
Toole	X	6	In person	
Valley	X	3	In person	
Wheatland			In person	X
Yellowstone	X	27	In person	X

APPENDIX C

DETENTION CENTER BACKGROUND INFORMATION

County ¹⁶⁴	Facility	# of Beds	# of Staff	Year Built
Beaverhead	Detention Center	14	5*	1975
Big Horn	Detention Center	29	5	1980
Blaine	No Detention Center	-	-	-
Broadwater	Detention Center	48	6*	2005
Carbon	No Detention Center	-	-	-
Carter	No Detention Center	-	-	-
Cascade	Detention Center	220	88**	1998
Chouteau	Detention Center	28	1*	1986
Custer	72-Hour Hold	-	-	-
Daniels	No Detention Center	-	-	-
Dawson	Detention Center	28	36**	1998
Deer Lodge	Detention Center	32	N/A	2004
Fallon	Detention Center	12	8	1975, Remodeled '85
Fergus	Detention Center	38	6, 1 part-time	1976
Flathead	Detention Center	87	27*	1987
Gallatin	Detention Center	180	36	2011
Garfield	No Detention Center	-	-	-
Glacier	Detention Center	24	6	2008
Golden Valley	72-Hour Hold	-	-	-
Granite	Detention Center	10	None	1893
Hill	Detention Center	79	10, 4 part-time	1999
Jefferson	Detention Center	21	4, 5 part-time*	1986
Judith Basin	No Detention Center	-	-	-
Lake	Detention Center	46	20	1974
Lewis and Clark	Detention Center	58	25	1985
Liberty	72-Hour Hold	-	-	-
Lincoln	Detention Center	25	8	1970s, 1980
Madison	72-Hour Hold	-	-	-

¹⁶⁴ *- indicates detention centers that utilize Sheriff's department staff (either deputies or dispatchers) to supplement the detention staff or operate the detention center

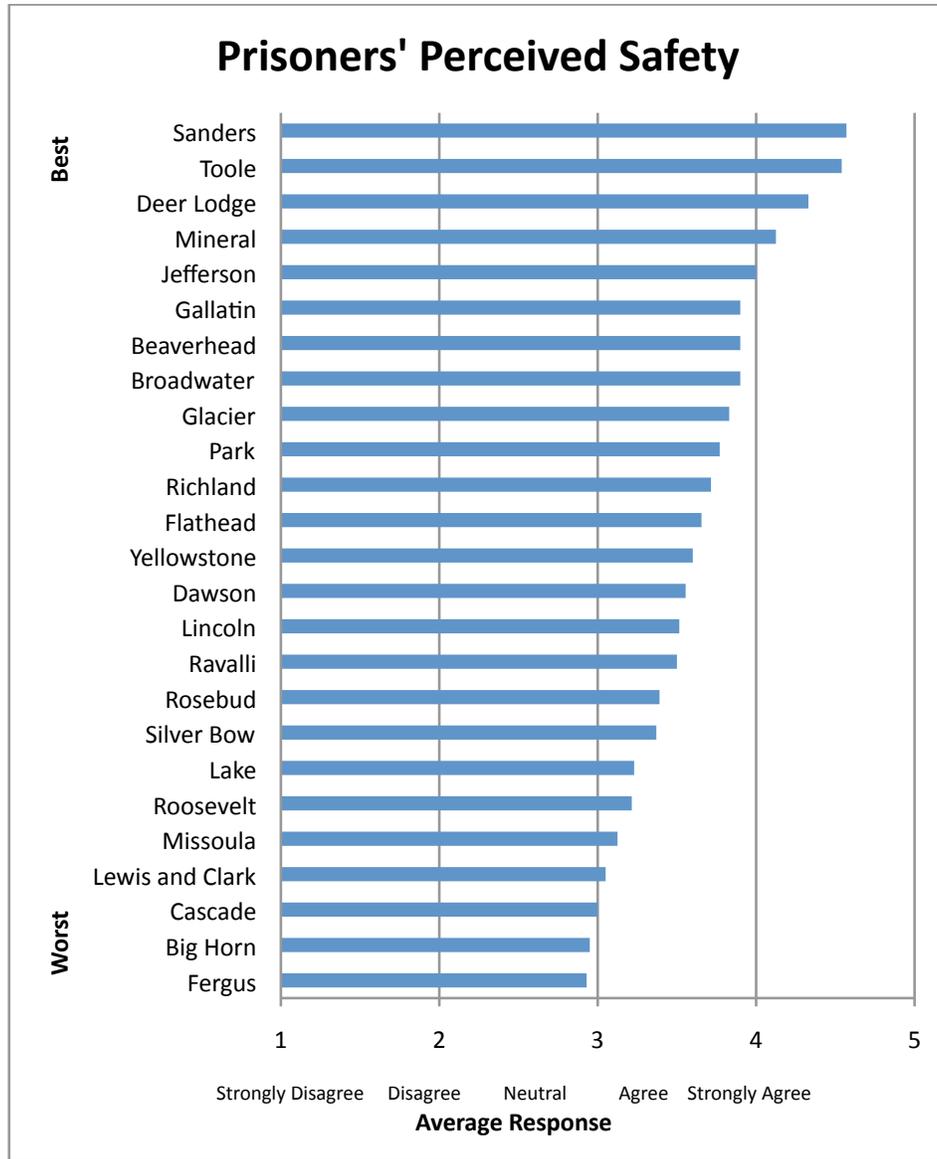
** - indicates detention centers that also operate as regional detention facilities, so the number of staff is for both a county side and state side of the detention center

County	Facility	# of Beds	# of Staff	Year Built
McCone	No Detention Center	-	-	-
Meagher	Detention Center	5	0*	1890s
Mineral	Detention Center	27	6	1994
Missoula	Detention Center	212	77**	1999
Musselshell	Detention Center	12	1*	1923
Park	Detention Center	20	8, 2 part-time	1976
Petroleum	No Detention Center	-	-	-
Phillips	No Detention Center	-	-	-
Pondera	Detention Center	13	0*	Remodeled 1980s
Powder River	Detention Center	16	0*	1977
Powell	Detention Center	31	0*	1978
Prairie	No Detention Center	-	-	-
Ravalli	Detention Center	77	20	1995
Richland	Detention Center	26	8	2011
Roosevelt	Detention Center	17	N/A	N/A
Rosebud	Detention Center	26	N/A	1978
Sanders	Detention Center	30	6	1979
Sheridan	72-Hour Hold	-	-	-
Silver Bow	Detention Center	75	27	2004
Stillwater	No Detention Center	-	-	-
Sweet Grass	No Detention Center	-	-	-
Teton	72-Hour Hold	-	-	-
Toole	Detention Center	10	2*	1976
Treasure	No Detention Center	-	-	-
Valley	Detention Center	26	5, 4 part-time	2011
Wheatland	Detention Center	6	0*	1971
Wibaux	No Detention Center	-	-	-
Yellowstone	Detention Center	482	86	1987

¹ *- indicates detention centers that utilize Sheriff's department staff (either deputies or dispatchers) to supplement the detention staff or operate the detention center

** - indicates detention centers that also operate as regional detention facilities, so the number of staff is for both a county side and state side of the detention center

APPENDIX D



NOTE: Prisoners' perceived safety was calculated using two statements (I feel safe in my cell; I feel safe in the day room). Each response was scored from 1-5 (Strongly disagree – 1, strongly agree – 5), and a mean was determined for each county for each question. A mean of the means was calculated to determine a composite mean for prisoners' perceived safety as a whole.

APPENDIX E

ADEQUACY OF MEDICAL CARE

County	% of treated prisoners unsatisfied w/ medical care	County	% of treated prisoners unsatisfied w/ medical care
Missoula	83.3	Valley	33.3
Lake	58.3	Jefferson	33.3
Flathead	52.9	Fergus	30.8
Cascade	52.6	Mineral	25
Silver Bow	50	Beaverhead	20
Dawson	50	Sanders	18.2
Gallatin	50	Toole	16.7
Roosevelt	50	Glacier	14.3
Big Horn	50	Park	14.3
Broadwater	46.2	Chouteau	0
Richland	42.9	Deer Lodge	0
Rosebud	42.9	Fallon	0
Lewis and Clark	42.9	Hill	0
Yellowstone	40.7	Musselshell	0
Lincoln	40	Powell	0
Ravalli	36.8	State Wide	43.1%

NOTE: After responding “yes” to being seen by medical health staff in a detention center, prisoners were asked whether they were satisfied with their mental care. Those who responded “no” were considered “unsatisfied.”

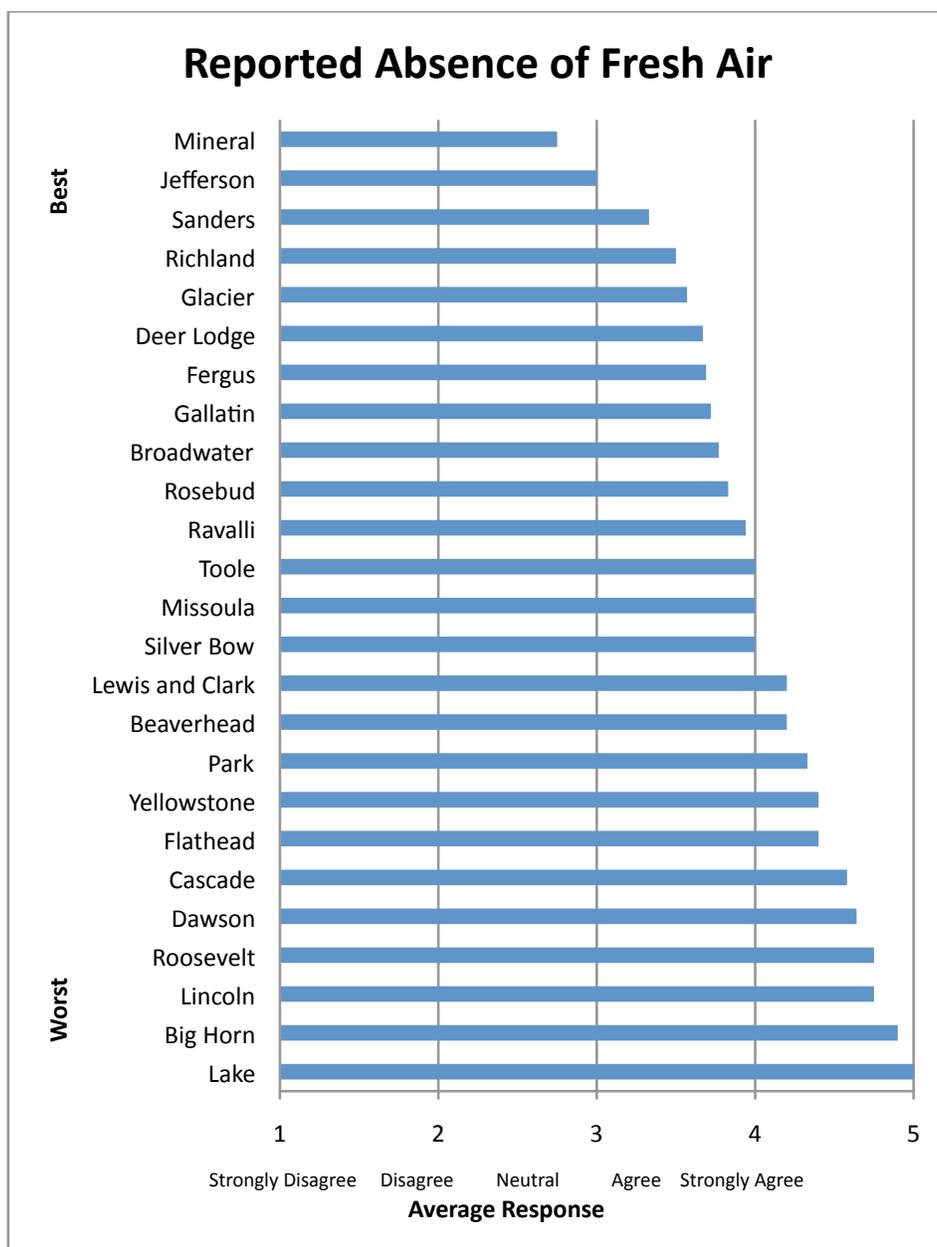
APPENDIX F

ADEQUACY OF MENTAL HEALTH SERVICES

County	% of treated prisoners unsatisfied w/ mental health care	County	% of treated prisoners unsatisfied w/ mental health care
Missoula	66	Sanders	18.2
Lincoln	60	Toole	16.7
Flathead	52.9	Lake	16.7
Yellowstone	40.7	Glacier	14.3
Lewis and Clark	38.1	Park	14.3
Cascade	36.8	Big Horn	10
Fergus	35.7	Beaverhead	0
Gallatin	33.3	Chouteau	0
Jefferson	33.3	Deer Lodge	0
Broadwater	30.8	Fallon	0
Richland	28.6	Valley	0
Rosebud	28.6	Hill	0
Silver Bow	27.3	Musselshell	0
Ravalli	26.3	Roosevelt	0
Dawson	25	Powell	0
Mineral	25	State wide	30.4%

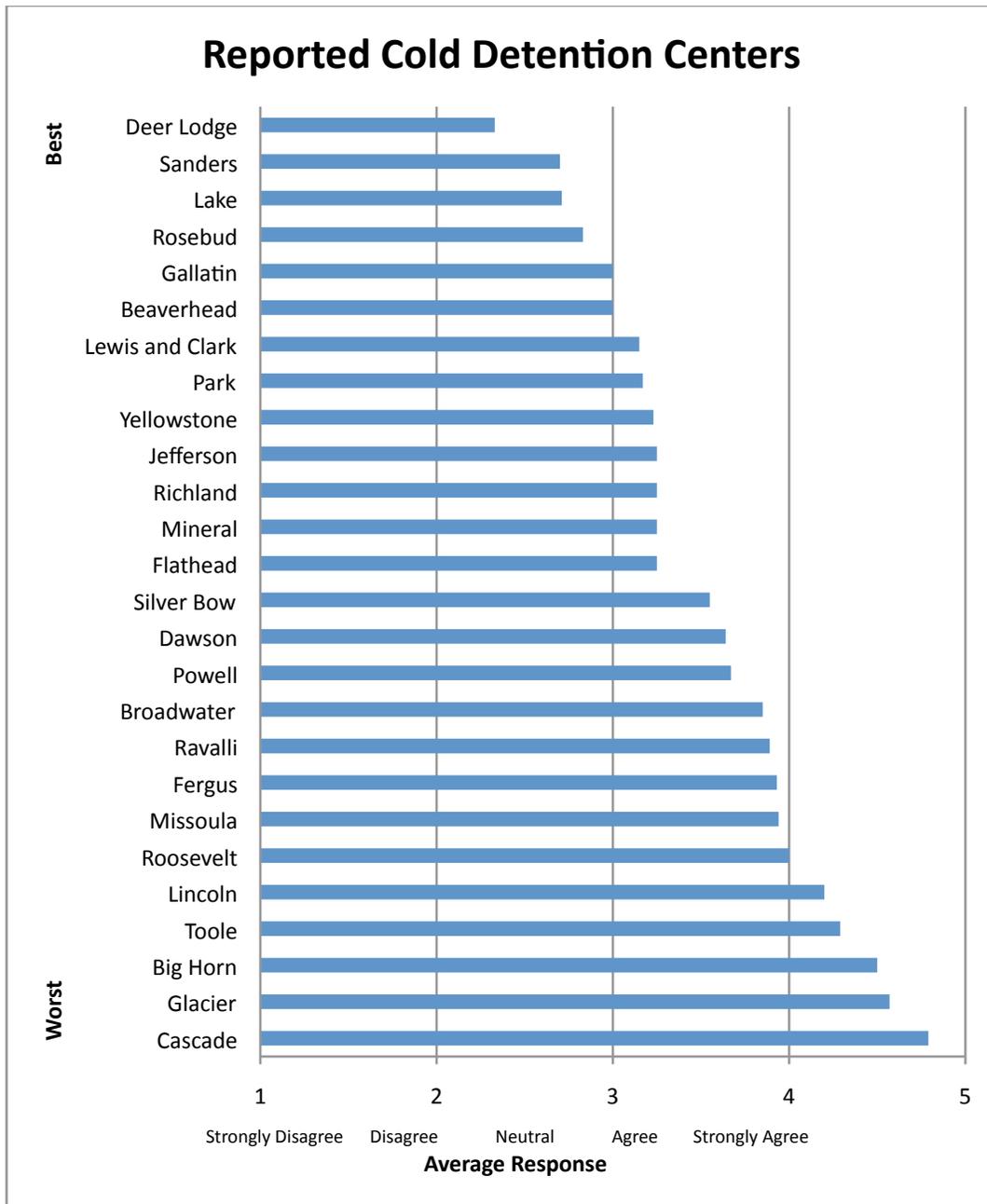
NOTE: After responding “yes” to being seen by mental health staff in a detention center, prisoners were asked whether they were satisfied with their mental health care. Those who responded “no” were considered “unsatisfied.”

APPENDIX G



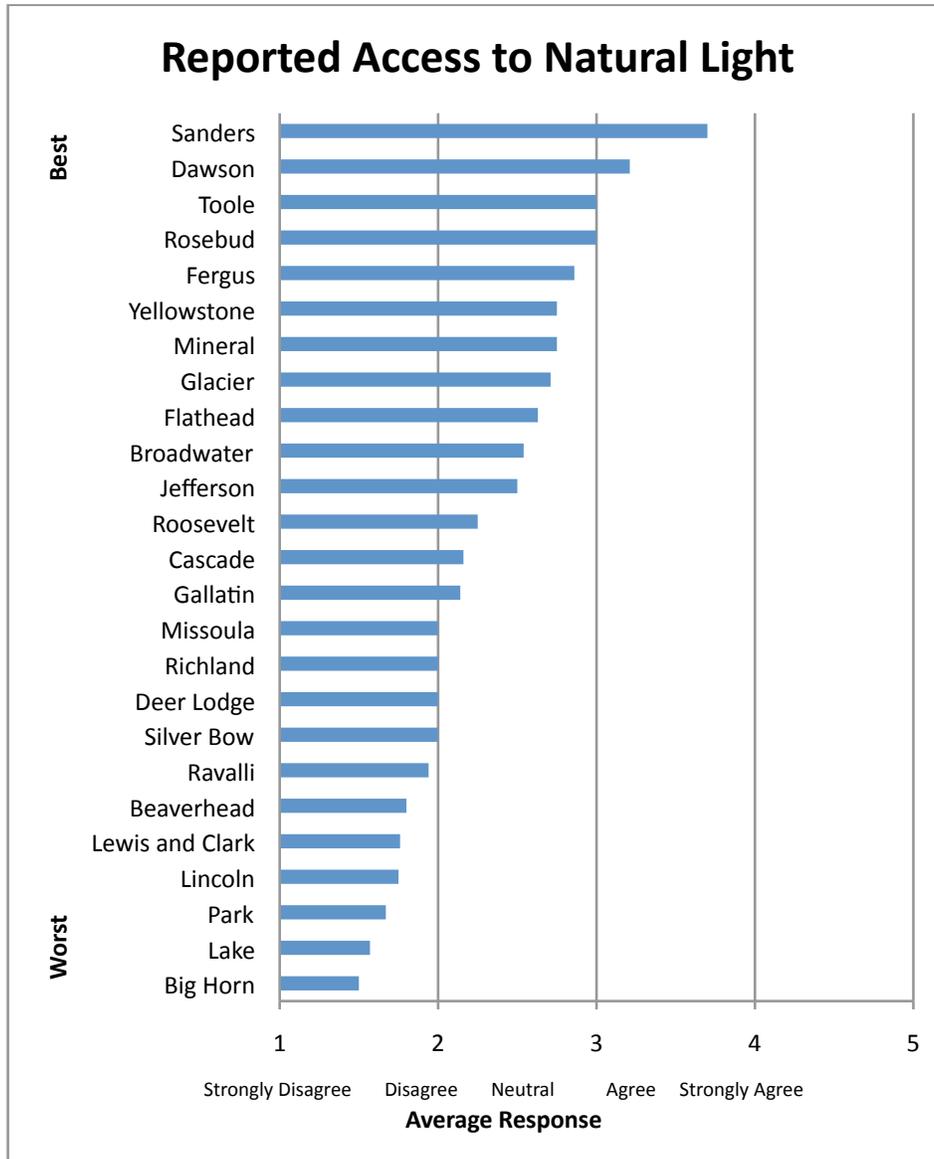
NOTE: Reported Absence of Fresh Air was calculated using prisoners' responses to one statement ("The jail is very stuffy and there is not enough fresh air."). Prisoners chose one of the five aforementioned responses, which were valued from 1-5 (Strongly disagree – 1, Strongly Agree – 5). A mean was calculated to determine average response for each detention center and the counties' scores were ranked with the least adequate detention center at the bottom of the chart and the most adequate at the top.

APPENDIX H



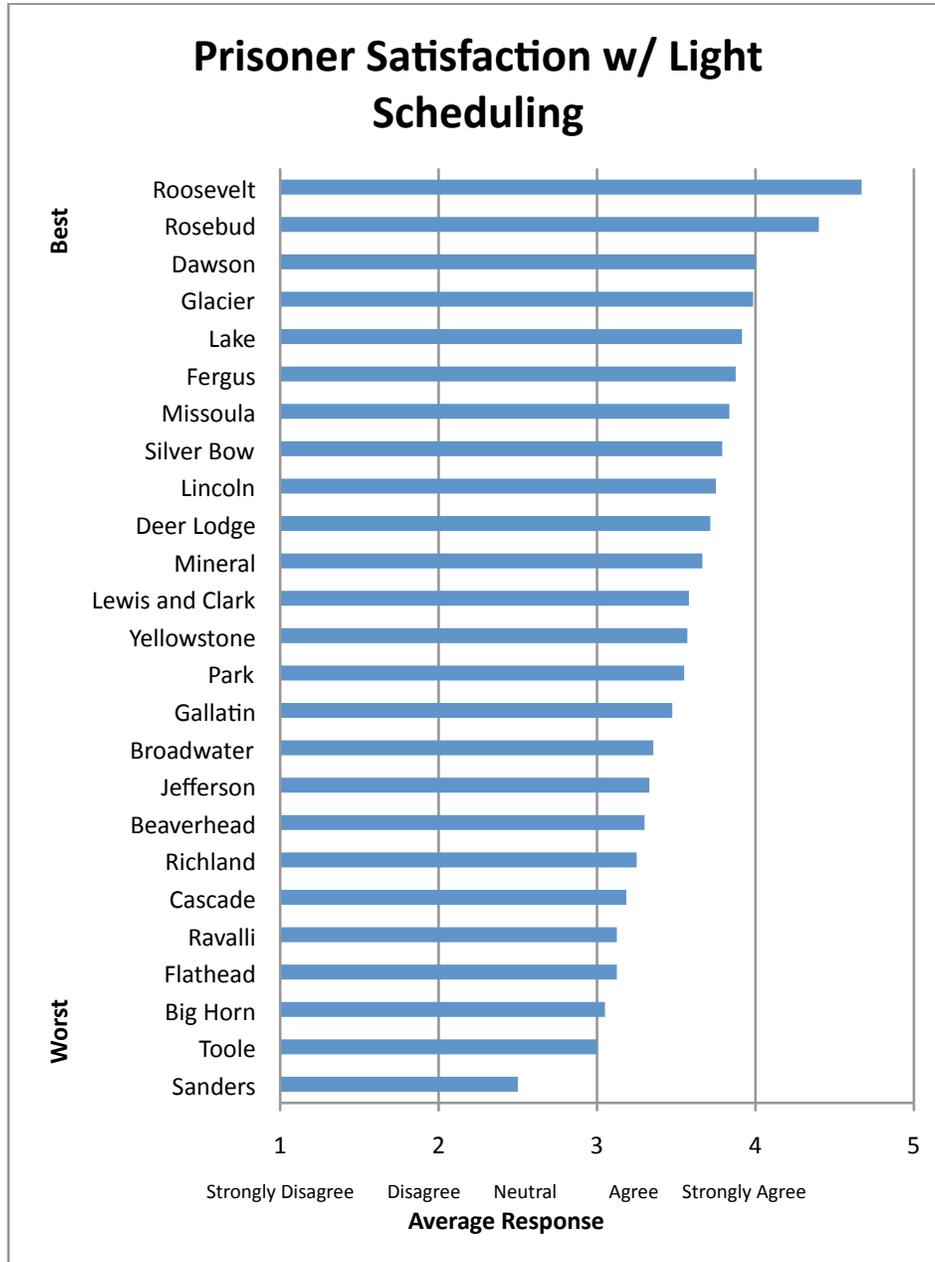
NOTE: Cold Detention Centers was calculated using two statements (“It is often too cold in my cell; it is often too cold in the entire jail.”) Each response was scored from 1-5 (Strongly disagree – 1, strongly agree – 5) and a mean was determined for each county for each question. A mean of the means was calculated to determine a composite mean to determine how cold a facility is.

APPENDIX I



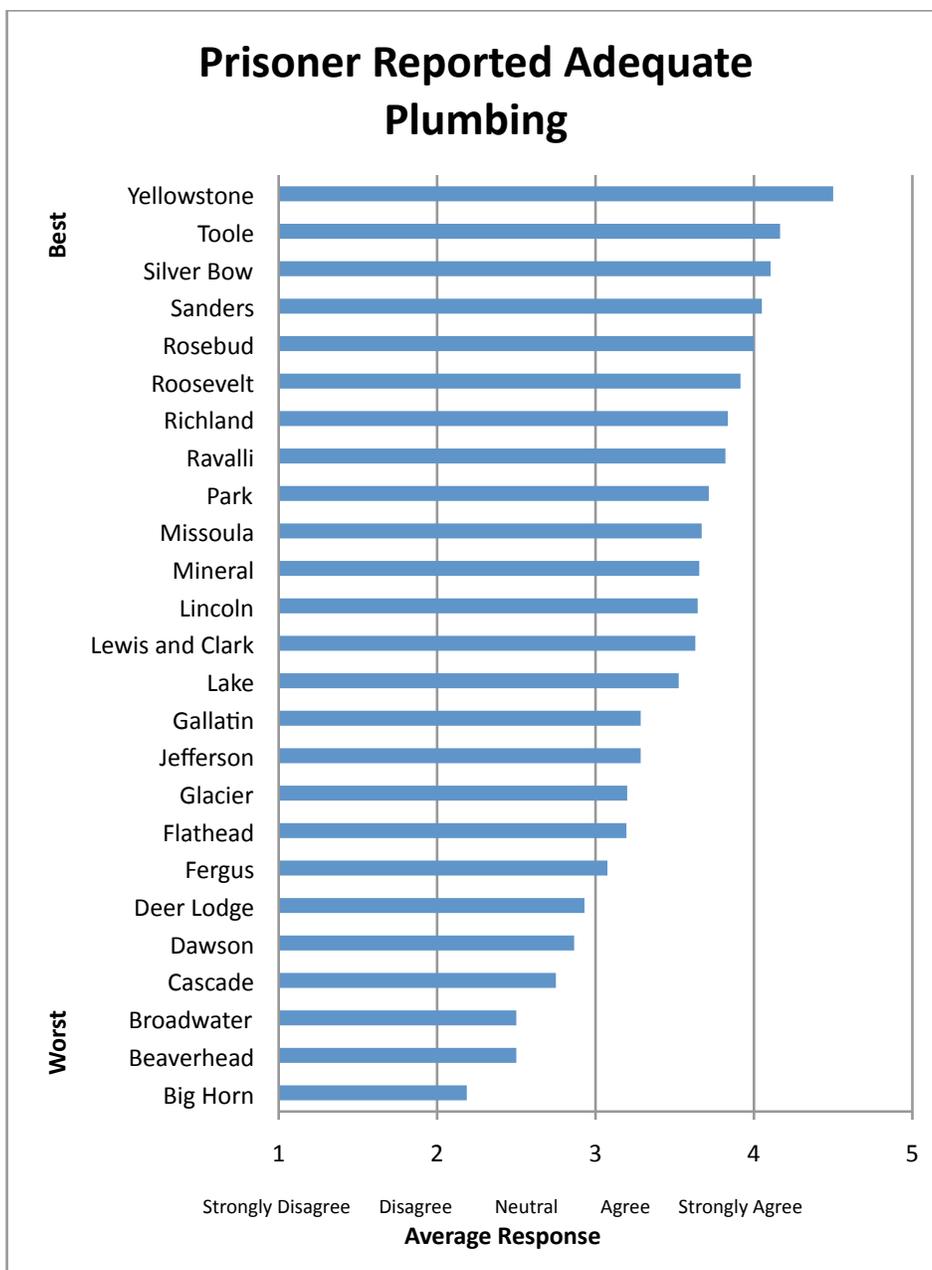
NOTE: Reported Access to Natural Light was calculated using prisoners' responses to one statement ("I see an adequate amount of natural light while I am in my cell."). Prisoners chose one of the five responses, which were valued from 1-5 (Strongly disagree – 1, Strongly Agree – 5). A mean was calculated to determine the average response for each detention center and the counties' scores were ranked with the least adequate detention center at the bottom of the chart and the most adequate at the top.

APPENDIX J



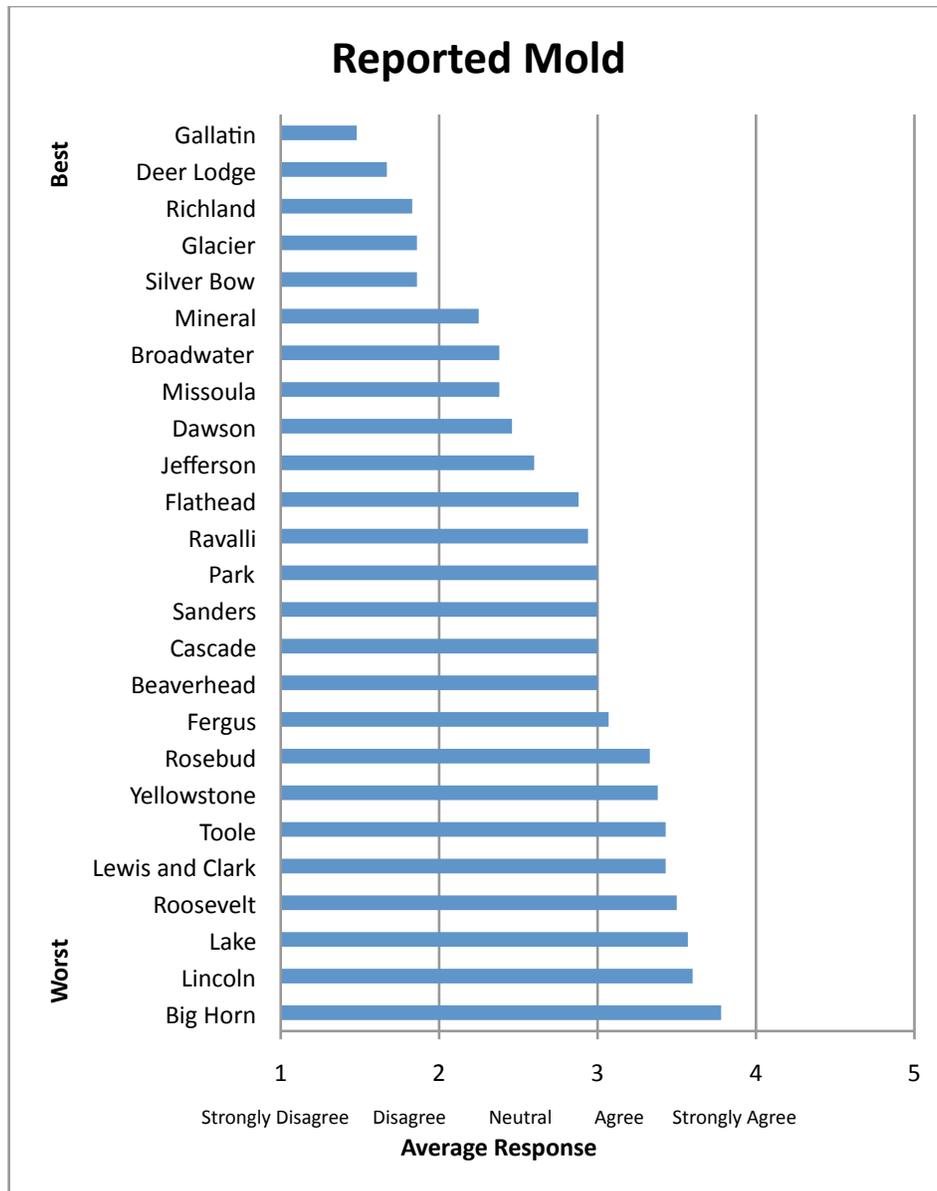
NOTE: Prisoner Satisfaction w/ Light Scheduling was calculated using two statements (“There is enough lighting in my room to read or write; the scheduling of lighting in the jail is consistent and fair.”). Each response was scored from 1-5 (Strongly disagree – 1, strongly agree – 5) and a mean was determined for each county for each question. A mean of the means was calculated to determine a composite mean for prisoners’ satisfaction with lighting in the facility as a whole.

APPENDIX K



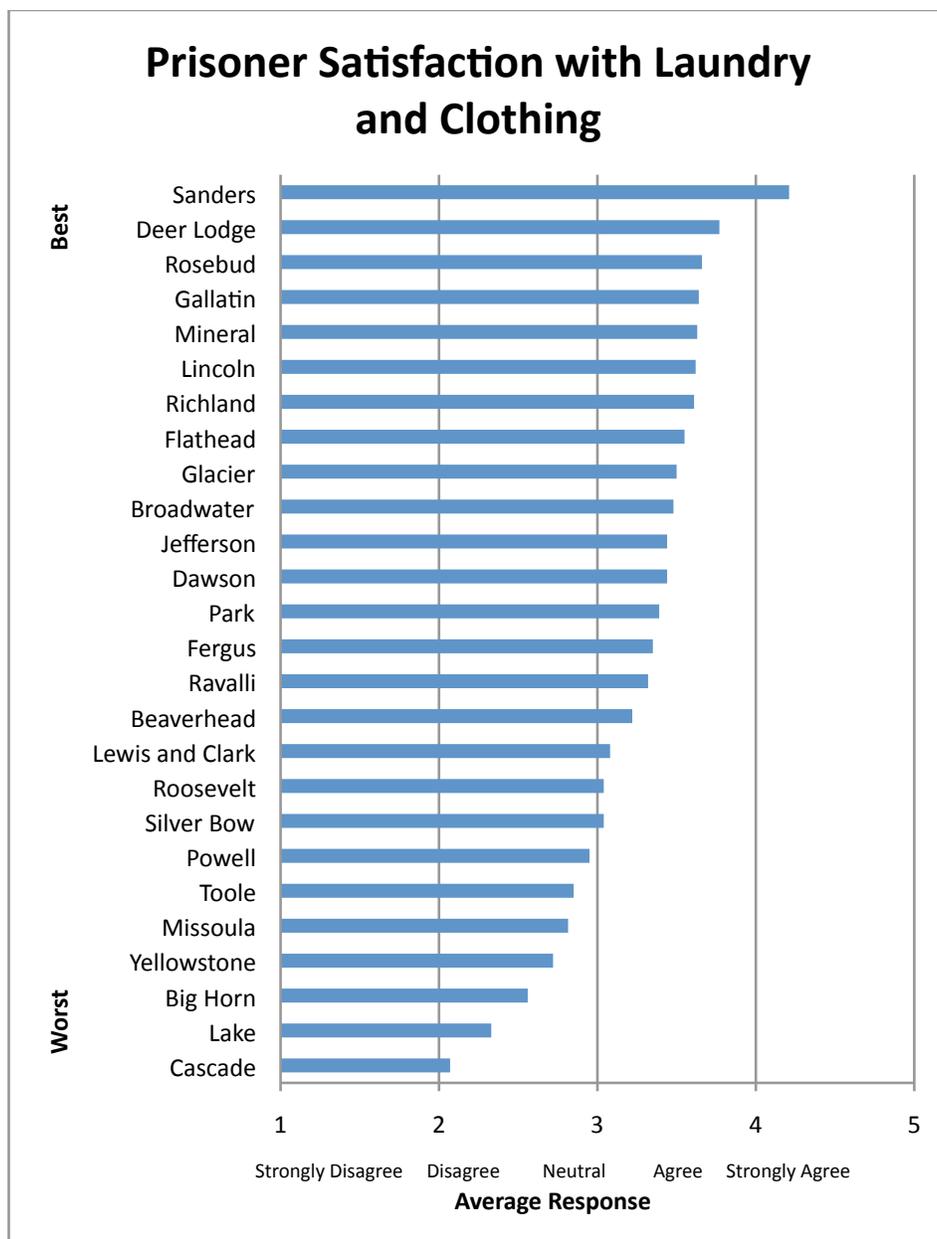
NOTE: Prisoner Reported Adequate Plumbing was calculated using four statements (“The toilet in my cell functions and rarely has problems; The sink in my cell functions and rarely has problems; I have access to a working sink and toilet in my room; When I shower, the water temperature is good.”). Each response was scored from 1-5 (Strongly disagree – 1, strongly agree – 5) and a mean was determined for each county for each question. A mean of the means was calculated to determine a composite mean for prisoners’ satisfaction with plumbing in the different facilities.

APPENDIX L



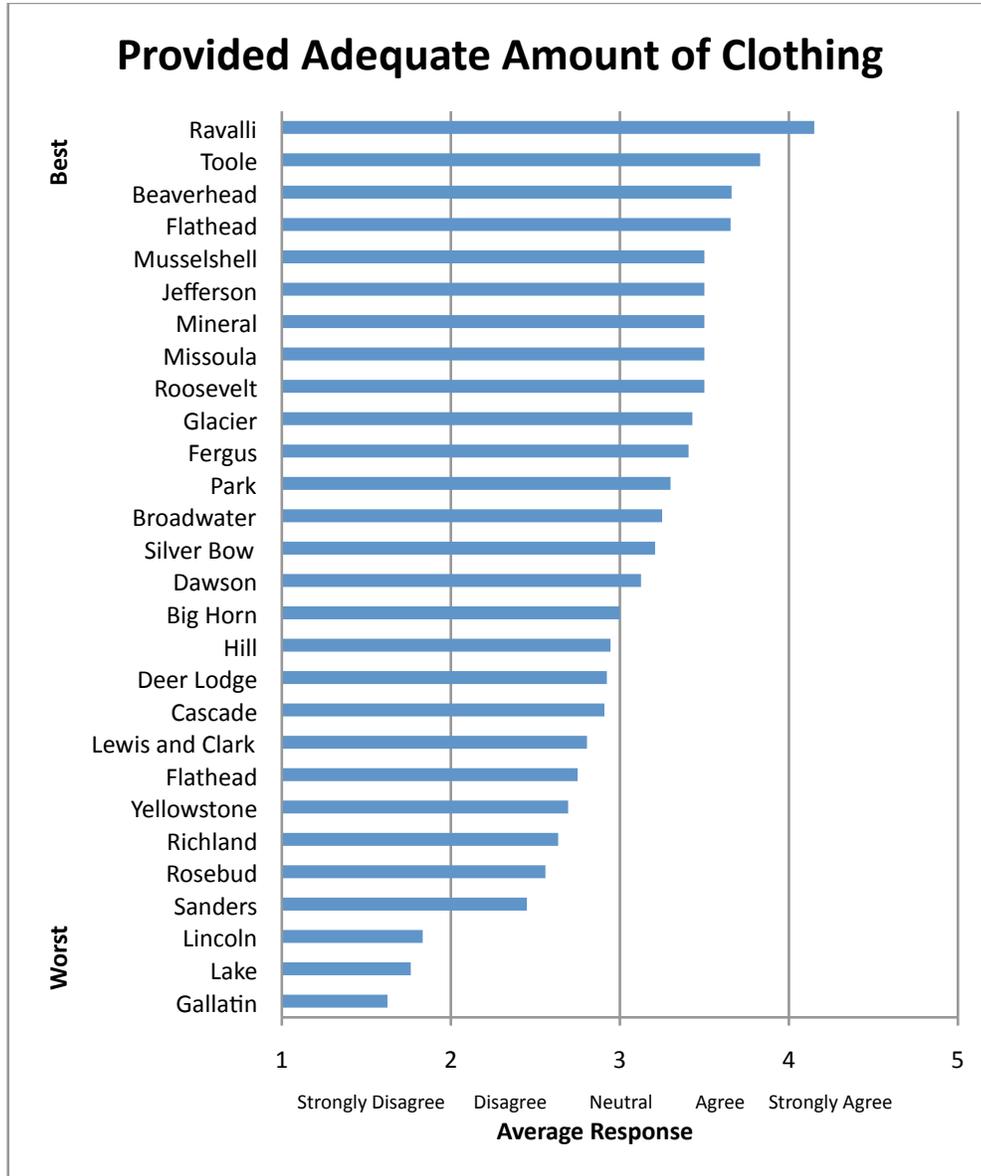
NOTE: Reported Mold was calculated using prisoners’ responses to one statement (“There is visible mold in or around my cell.”). Prisoners chose one of the five responses, which were valued from 1-5 (Strongly disagree – 1, Strongly Agree – 5). A mean was calculated to determine average response for each detention center and the counties’ scores were ranked with the least adequate detention center at the bottom of the chart and the most adequate at the top.

APPENDIX M



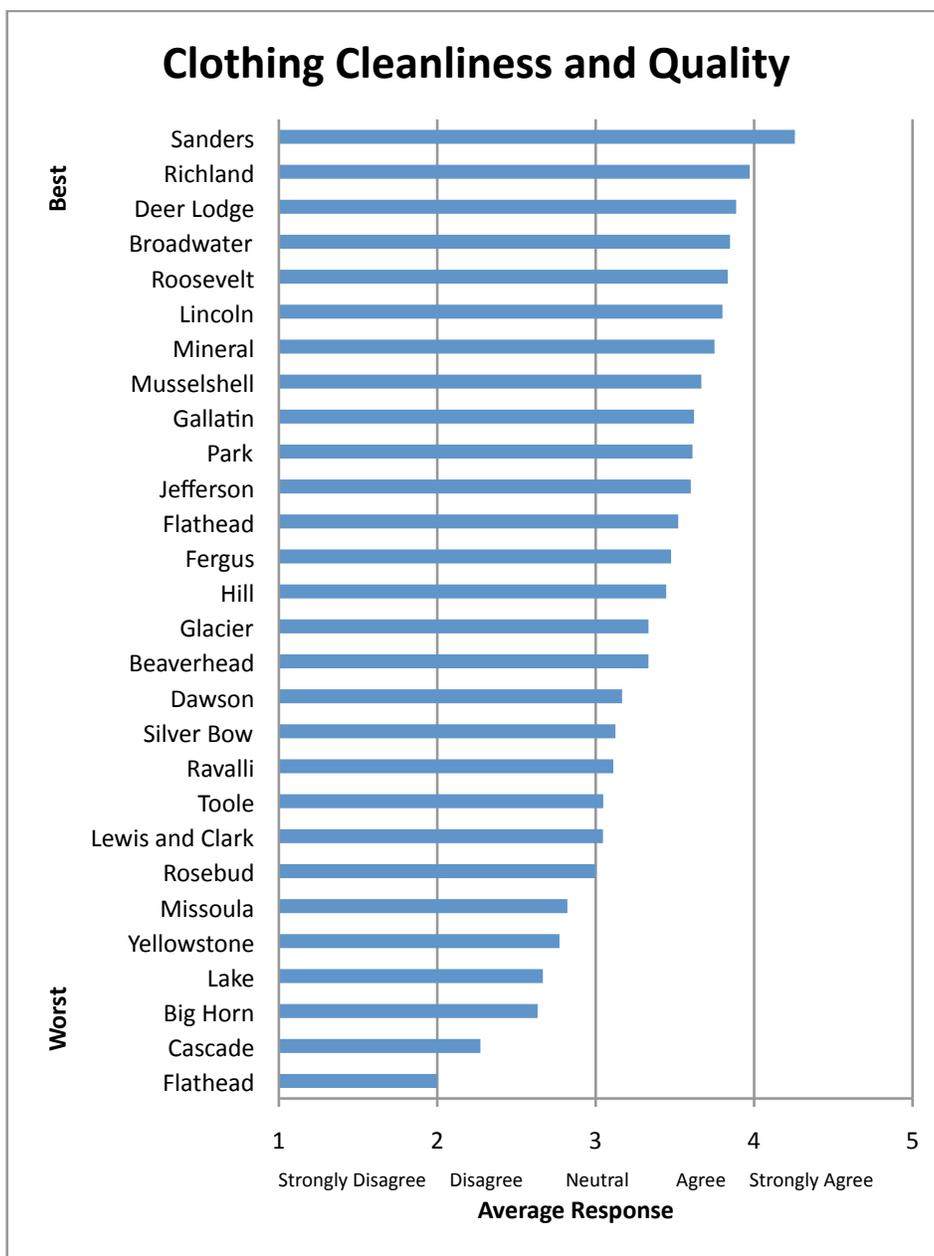
NOTE: Prisoner Satisfaction with Laundry and Clothing was calculated using four statements (“Clean clothing is provided to me at the jail; the jail has supplied me with enough clothing; the clothing the jail has given me is in decent shape; I receive adequate clothing even if I do not have the money.”). Each response was scored from 1-5 (Strongly disagree – 1, strongly agree – 5) and a mean was determined for each county for each question. A mean of the means was calculated to determine a composite mean for prisoners’ overall satisfaction with clothing and laundry.

APPENDIX N



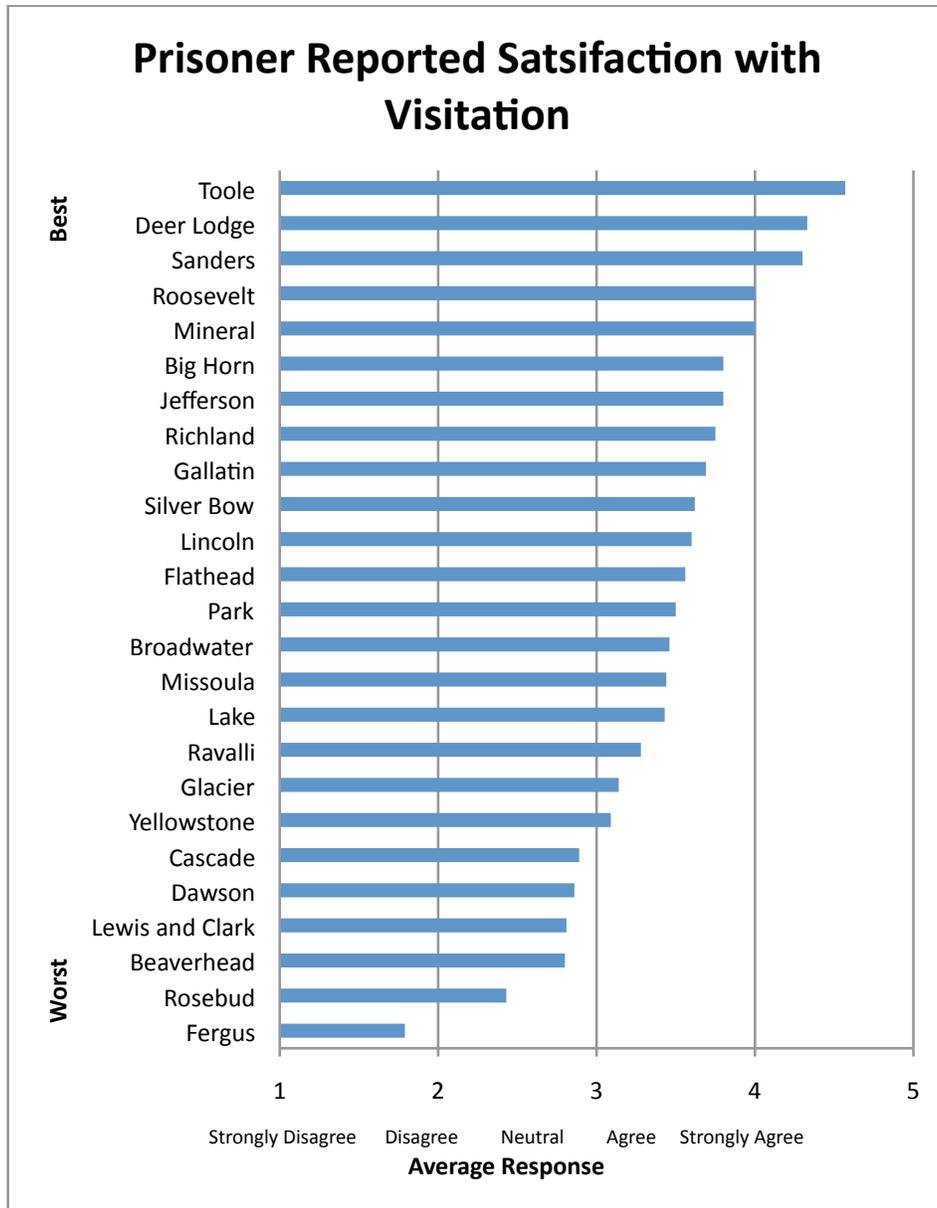
NOTE: Provided Adequate Amount of Clothing was calculated using two statements (“The jail has supplied me with enough clothing; I receive adequate clothing even if I do not have the money.”). Each response was scored from 1-5 (Strongly disagree – 1, strongly agree – 5) and a mean was determined for each county for each question. A mean of the means was calculated to determine a composite mean to evaluate the adequacy of clothing provided to prisoners in each facility.

APPENDIX O



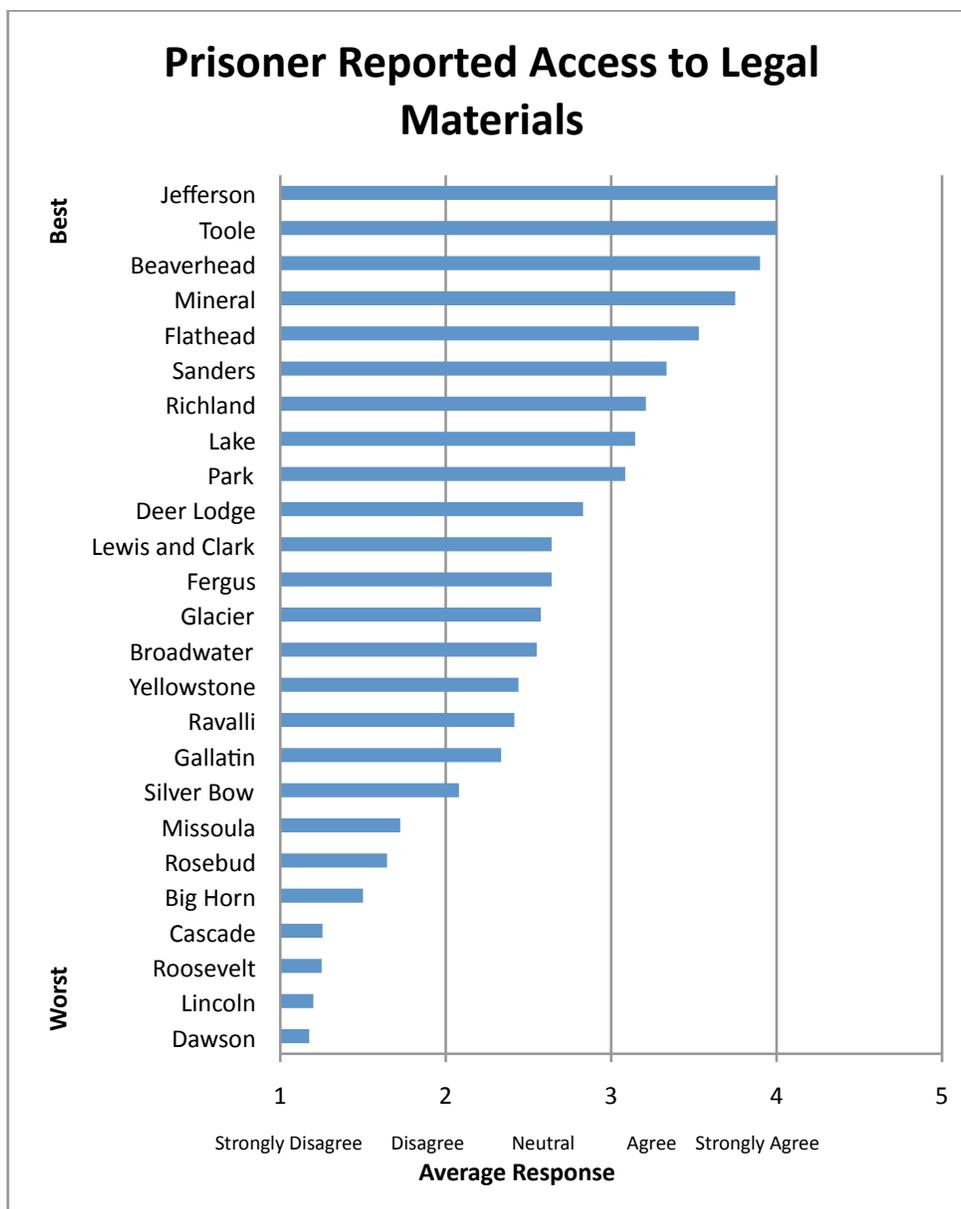
NOTE: Provided Clothing Cleanliness and Quality was calculated using three statements (“Clean clothing is provided to me at the jail; the clothing the jail has given me is in decent shape; the jail offers consistently to wash my clothing.”). Each response was scored from 1-5 (Strongly disagree – 1, strongly agree – 5) and a mean was determined for each county for each question. A mean of the means was calculated to determine a composite mean to evaluate the quality and cleanliness of clothing provided to prisoners.

APPENDIX P



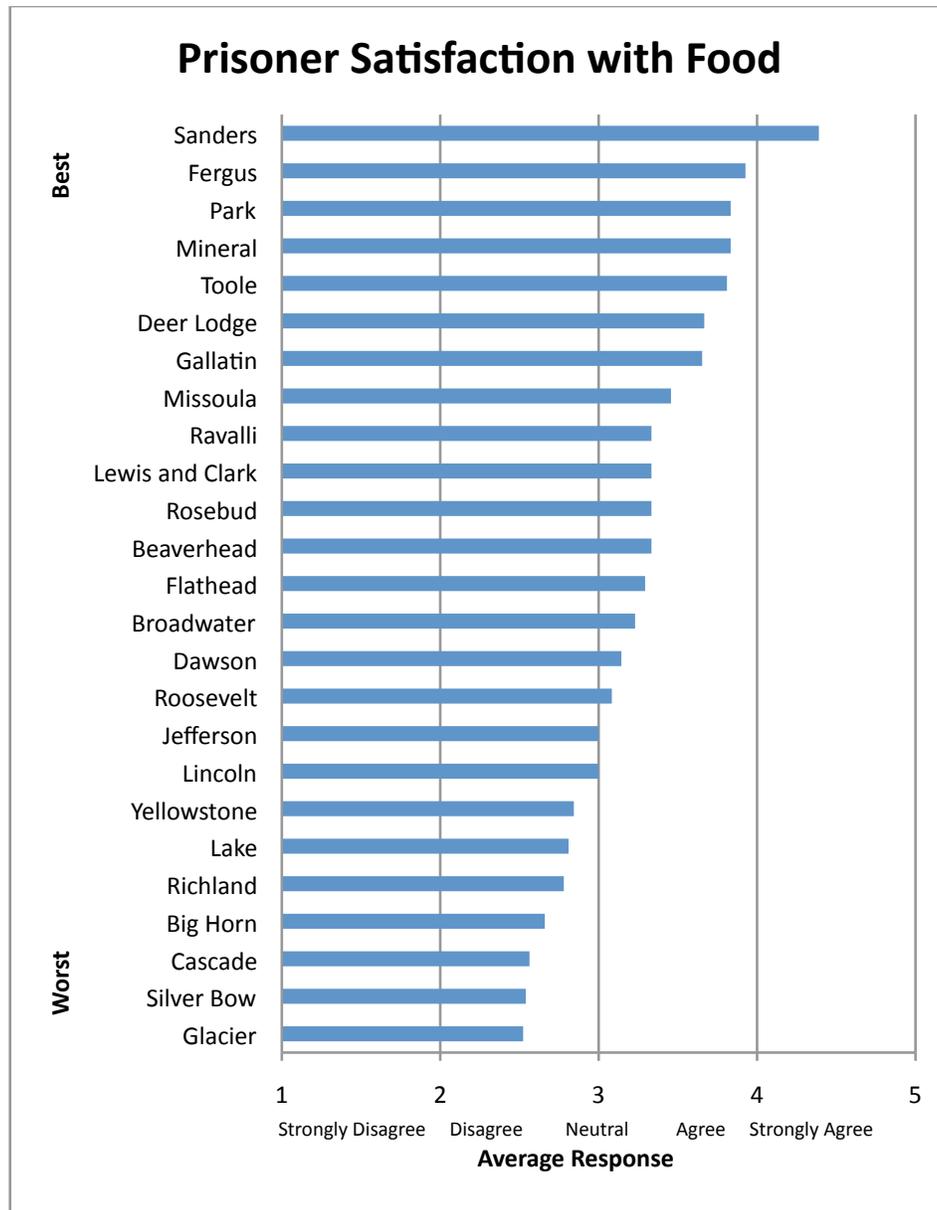
NOTE: Prisoner Reported Satisfaction with Visitation was calculated using prisoners’ responses to one statement (“I am allowed to have family and friends visit on a regular basis.”). Prisoners chose one of the five aforementioned responses, which were valued from 1-5 (Strongly disagree – 1, Strongly Agree – 5). A mean was calculated to determine average response for each detention center and the counties’ scores were ranked with the least adequate detention center at the bottom of the chart and the most adequate at the top.

APPENDIX Q



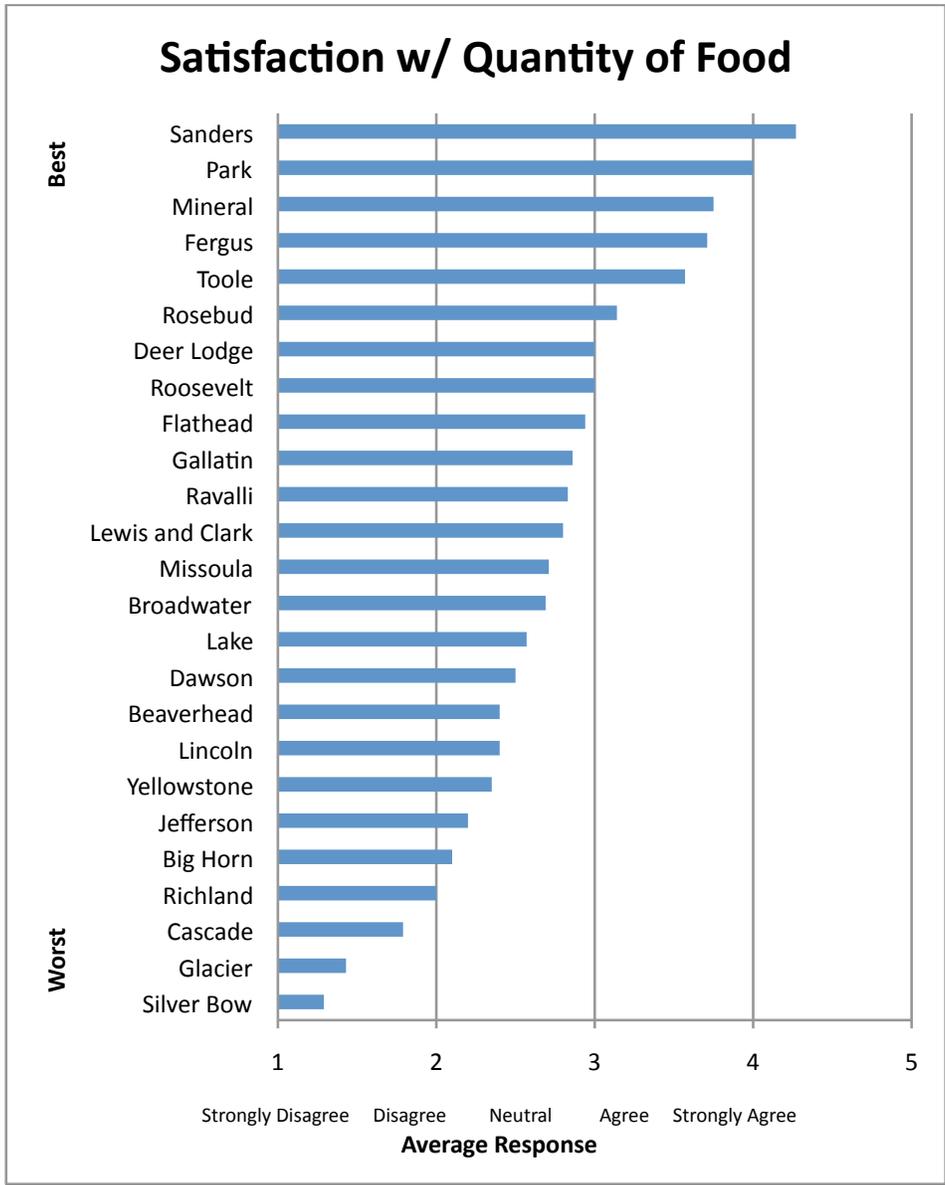
NOTE: Prisoners Reported Access to Legal Materials was calculated using two statements (“I have access to books that deal with law; I have access to a law library.”). Each response was scored from 1-5 (Strongly disagree – 1, strongly agree – 5) and a mean was determined for each county for each question. A mean of the means was calculated to determine a composite mean evaluating prisoners access to legal materials.

APPENDIX R



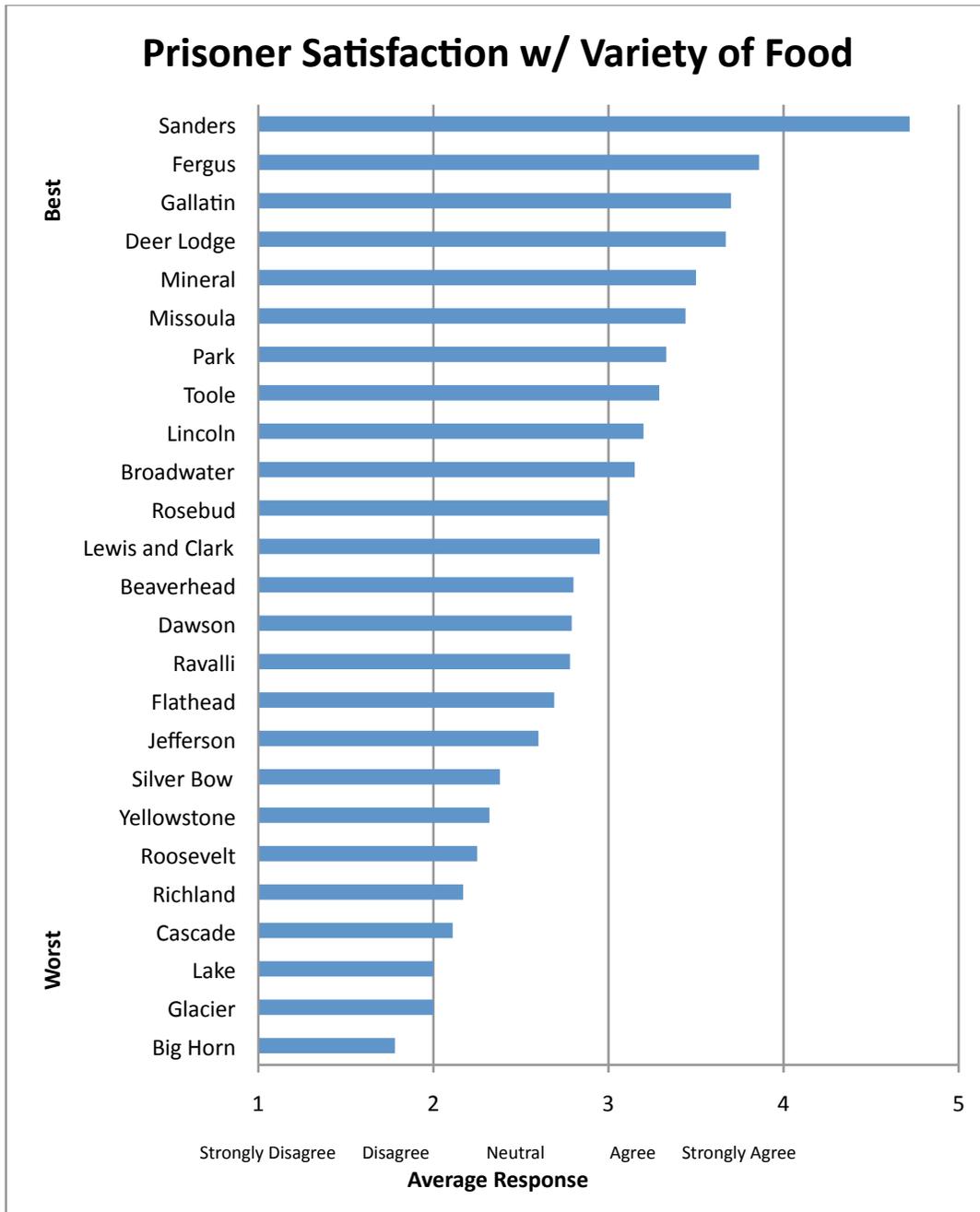
NOTE: Prisoners Satisfaction with Food was calculated using three statements (“I receive three meals a day, every day; I receive a sufficient amount of food every day; when meals are served in the jail, there is a variety of food.”). Each response was scored from 1-5 (Strongly disagree – 1, strongly agree – 5) and a mean was determined for each county for each question. A mean of the means was calculated to determine a composite mean evaluating prisoners’ satisfaction with food provided at different facilities.

APPENDIX S



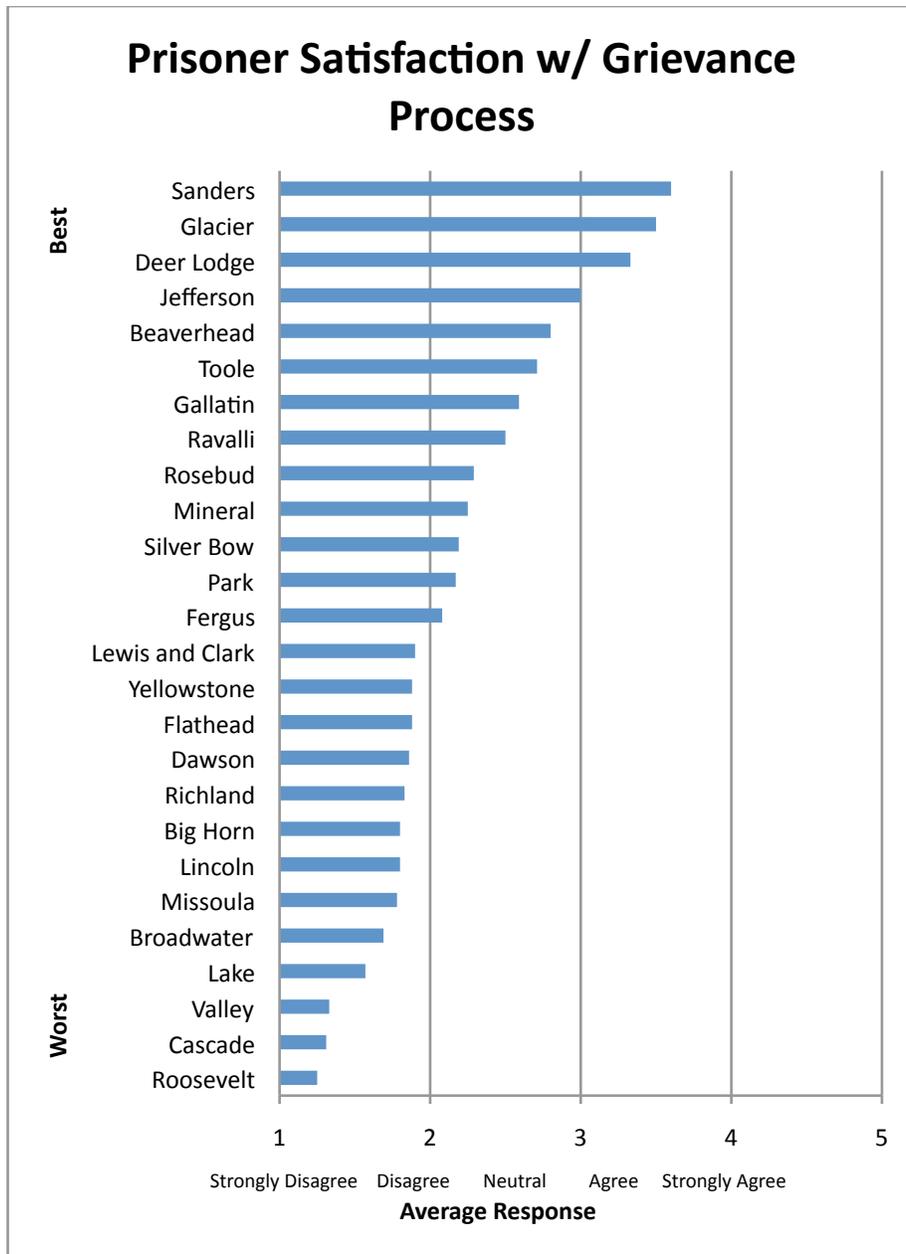
NOTE: Reported Satisfaction w/ Quantity of Food was calculated using prisoners' responses to one statement ("I receive a sufficient amount of food every day."). Prisoners chose one of the five responses, which were valued from 1-5 (Strongly disagree – 1, Strongly Agree – 5). A mean was calculated to determine average response for each detention center and the counties' scores were ranked with the least adequate detention center at the bottom of the chart and the most adequate at the top.

APPENDIX T



NOTE: Reported Satisfaction w/ Variety of Food was calculated using prisoners' responses to one statement ("When meals are served in jail, there is a variety of food."). Prisoners chose one of the five aforementioned responses, which were valued from 1-5 (Strongly disagree – 1, Strongly Agree – 5). A mean was calculated to determine average response for each detention center and the counties' scores were ranked with the least adequate detention center at the bottom of the chart and the most adequate at the top.

APPENDIX U



NOTE: Reported Prisoner Satisfaction w/ Grievance Process was calculated using prisoners’ responses to one statement (“The grievance system in this jail works.”). Prisoners chose one of the five responses, which were valued from 1-5 (Strongly disagree – 1, Strongly Agree – 5). A mean was calculated to determine average response for each detention center and the counties’ scores were ranked with the least adequate detention center at the bottom of the chart and the most adequate at the top.

APPENDIX V

Missoula Detention Center Exercise Policies and Procedures

MISSOULA COUNTY SHERIFF'S DEPARTMENT
DETENTION POLICY AND PROCEDURE MANUAL



Policy No: 17-17

Effective Date: 11-30-01

Title: EXERCISE AND
RECREATIONAL OPPORTUNITIES
FOR INMATES

Revision Date: 11-27-01, 11-30-2005, 04-01-2014

MT Jail Standards: 17.08, 19.20, 19.21

POLICY

It is the policy of the Missoula County Detention Facility to provide appropriate access and availability to recreation and exercise opportunities for inmates. Inmates have access to exercise opportunities including at least one hour daily of physical exercise outside the cell, when available. Inmates have opportunities to participate in leisure-time activities outside their respective cell on a daily basis.

PROCEDURE

The schedule of exercise and recreation shall be available and posted in each Housing Unit Pod. Each pod within a housing unit is allotted a one hour block of time in their respective outdoor recreation area at least 5 days a week. The scheduled time for each Pod will rotate, allowing equal access to available times of day. The housing control officer shall document all recreation offerings in the Jail Management Program (New World). Additional opportunities can be offered to Pods outside of the schedule as time and staffing allows.

Inmates are allowed to exercise in dayrooms during times they are unlocked as long as it doesn't interfere with other scheduled activities or cleaning.

General Population housing pods will be offered recreational opportunities as a group. Inmates are not required to participate. Inmates that choose to attend will be escorted as a group.

Classification Pods, Segregation Pods, and Maximum Security inmates will be offered recreation singly or as a group as determined by the Unit Manager. Any restriction will be documented in the inmate management plans.

WEATHER: Recreation opportunities will be generally provided during daylight hours. Jail Administration has the authority to identify extreme weather conditions (e.g. Cold or hot temperatures, blizzards, rain/thunder/lightning storms, and other inclement conditions) that would create an unsafe condition for inmates to occupy recreation facilities. In extreme weather conditions and when it is in the best interest of the inmate(s) and staff, the outdoor recreation opportunities may be suspended or

Policy # 17-17
April 30, 2014
Page 2

Cont.

cancelled until conditions have improved. During periods of cold weather, inmates will be offered/provided clean and usable coats to wear during outdoor recreation. When recreation opportunities are cancelled, documentation of such will be recorded in the shift commander's log and unit post log.

SAFETY/SECURITY: Where legitimate safety and security concerns are apparent, Jail Administration may disallow recreation opportunities. Prisoners may not be denied access to recreation solely because they are in Administrative Segregation or Disciplinary Lock-down. When recreation opportunities are cancelled, documentation of such will be recorded in the shift commander's log and unit post log.

MEDICAL ISSUES: Serious medical conditions may be cause to restrict inmates from attending recreation. These instances will be identified and documented in the inmate(s) medical record. "No Recreation Orders" will be provided to staff regarding restrictions to recreation for this reason so as not to compromise protected medical information.

ACCESS RESTRICTIONS. Any denials/restrictions to recreation shall be for the least amount of time possible, and shall require written documentation in the form of a "No Recreation Order" on file for each day access is denied. Inmates will be informed of restrictions placed on them to attend recreation.

Acknowledgements

This report is the product of work from several individuals. Contributions to the report came from Anna Conley, a former ACLU of Montana staff attorney, and Jacob Coolidge, a former adjunct professor at the University of Montana Sociology Department and student at the University of Montana, School of Law. This report includes data compiled by Anna Conley and Jacob Coolidge. ACLU of Montana staff conducted detention center tours and interviews with administrators and sheriffs as well as sent questionnaires to prisoners. In addition, the authors created and utilized the questionnaire attached as [Appendix A](#). With the help of Krystal Pickens, ACLU of Montana paralegal and intake coordinator, as well as key volunteers, including Ben Nelson, Hannah Cail, and Kevin Johnson, hundreds of questionnaires were mailed to prisoners throughout the state and responses were processed into a database.

Contact Us

For information about this report, please contact the ACLU of Montana at aclu@aclumontana.org or 406-443-8590.

