

BEFORE THE DEPARTMENT OF JUSTICE  
BOARD OF CRIME CONTROL  
OF THE STATE OF MONTANA

In the matter of the repeal of ARM	)	NOTICE OF PROPOSED REPEAL
23.14.204, 23.14.205, and 23.14.206, and	)	AND AMENDMENT
the amendment of ARM 23.14.101,	)	
23.14.201, 23.14.203, 23.14.302,	)	NO PUBLIC HEARING
23.14.303, 23.14.304, 23.14.305,	)	CONTEMPLATED
23.14.601, 23.14.603, 23.14.604,	)	
23.14.605, 23.14.606, and 23.14.1008,	)	
concerning the duties and functions of the	)	
Board of Crime Control	)	

TO: All Concerned Persons

1. On March 23, 2012, the Department of Justice proposes to repeal and amend the above-stated rules.

2. The department will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the department no later than 5:00 p.m. on March 5, 2012, to advise us of the nature of the accommodation that you need. Please contact Kathy Stelling, Department of Justice, 215 North Sanders, P.O. Box 201401, Helena, MT 59620-1401; telephone (406) 444-2026; Montana Relay Service 711; fax (406) 444-3549; or e-mail [kstelling@mt.gov](mailto:kstelling@mt.gov).

3. The board proposes to repeal the following rules:

23.14.204 REQUEST TO REVIEW, found at page 23-523 of the Administrative Rules of Montana.

AUTH: 44-4-301, MCA  
IMP: 44-4-301, MCA

23.14.205 HEARING, found at page 23-523 of the Administrative Rules of Montana.

AUTH: 44-4-301, MCA  
IMP: 44-4-301, MCA

23.14.206 FINAL DETERMINATION, found at page 23-524 of the Administrative Rules of Montana.

AUTH: 44-4-301, MCA  
IMP: 44-4-301, MCA

RATIONALE AND JUSTIFICATION: The board has adopted an appeal policy that varies from these administrative rules. Rather than update ARM when this type of policy changes, it will be maintained internally.

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

23.14.101 BOARD OF CRIME CONTROL FUNCTIONS (1) remains the same.

(2) The board ~~currently~~ functions through ~~a single~~ an executive director and ~~planning staff who are responsible for directing and supervising the budgeting, recordkeeping, reporting, and related administrative and clerical functions of the agency.~~

(3) It is the responsibility of the board to administer the provisions of the Omnibus Crime Control and Safe Streets Act of 1968 (P.L. 90-351), as amended by ~~P.L. 91-644, 93-415, 94-430, 94-503, 96-157, 98-473, 99-570, 100-690, and 101-647,~~ the Victims of Crime Assistance Act and the Drug Free Schools and Communities Act. Under these provisions, the board may:

(3)(a) through (5) remain the same.

AUTH: 44-4-301, MCA

IMP: 44-4-301, MCA

RATIONALE AND JUSTIFICATION: The changes to (2) are added to provide clarification on staff functions. In (3), the public laws related to this Act continually change. Rather than change ARM each time, the board has decided to generally refer to the amendments encompassed by the two listed Acts.

23.14.201 INCORPORATION OF MODEL RULES (1) The board adopts the ~~Attorney General's model procedural rules one (1) ARM 1.3.201 through twenty-eight (28) 1.3.313~~ and incorporates herein those rules by reference.

AUTH: 44-4-301, MCA

IMP: 44-4-301, MCA

RATIONALE AND JUSTIFICATION: The model rules were modified in 2008. The changes to this rule are necessary to bring it into compliance with the new model rules.

23.14.203 APPLICATIONS FOR FINANCIAL ASSISTANCE (1) remains the same.

~~(2) The following rules of procedure are applicable for all subgrant requests and applications for financial assistance which are directed to the board.~~

AUTH: 44-4-301, MCA

IMP: 44-4-301, MCA

RATIONALE AND JUSTIFICATION: ARM 23.14.204 – 23.14.206 are being repealed so this section no longer applies.

23.14.302 MATCHING REQUIREMENTS (1) and (2) remain the same.

(3) Matching funds need not be expended concurrently with federal funds, but must be expended prior to the ~~time the last federal dollar has been spent~~ closure of the subgrant.

(4) and (5) remain the same.

AUTH: 44-4-301, MCA

IMP: 44-4-301, MCA

RATIONALE AND JUSTIFICATION: This rule is necessary to clarify that federal dollars may be spent prior to matching funds but the matching funds must be expended prior to the grant closing.

23.14.303 BUDGET REQUIREMENTS (1) Expenses that are unallowable under federal law are described in federal guidelines such as the Office of Justice Programs M7100.1D and Education Department General Administrative Regulations (EDGAR) Financial Guide. An announcement for solicitation of subgrant applications will describe such expenses for applicants.

~~(2) Federal funds may not be allocated for routine maintenance and/or repair of existing jail or detention facilities.~~

~~(3) All funds granted to a district court and/or a county attorney's office shall be considered as local funds provided that the funds in fact pass through the county in which the respective offices of the subgrantee are located.~~

~~(4) Travel allowances must be in accordance with prevailing state rates unless an alternative travel allowance schedule is approved by the board upon the request of a subgrantee. Fund requests for travel may not be for amounts greater than the least expensive mode of travel.~~

~~(5) Any excess cost over the federal contribution under one grant agreement may not be paid under another grant agreement.~~

~~(6) Expenditures other than those listed on the original grant application budget are subject to refund and/or penalty. Variances may be allowed if requested in advance and written authorization is received from the board.~~

AUTH: 44-4-301, MCA

IMP: 44-4-301, MCA

RATIONALE AND JUSTIFICATION: (1) These deletions are necessary because EDGAR is no longer utilized and the board no longer receives Department of Education grant funds. These items in (2)-(6) are now covered in Requests for Proposals, federal guidelines, and grant special conditions and thus need not be stated here.

23.14.304 GENERAL REQUIREMENTS (1) remains the same.

(2) Federal funds are not assured until an award letter signed by a representative of the board has been received by the applicant agency. The signed award letter, returned to the board, constitutes a binding contract between the applicant agency and the board, contingent upon availability of federal funds.

~~(3) Applications which do not comply with the above statements shall be returned to the applicant agency for corrections or amendment prior to presentation to the board.~~

AUTH: 44-4-301, MCA  
IMP: 44-4-301, MCA

RATIONALE AND JUSTIFICATION: The addition to (2) is necessary because federal funds may not always be available or could be pulled, and the board does not want to be in a position to be obligated for subgrant awards if federal funding is not available. The deletion to (3) is necessary because the board awards are made prior to sending award letters, so this process is outdated.

23.14.305 APPLICANTS AGREEMENT (1) through (1)(b) remain the same.

(c) appropriate grant records and accounts will be maintained and made available for audit as ~~prescribed~~ prescribed by the U.S. Department of Justice, U.S. Department of Education, or other federal grantor agency; and

(d) reports from subgrantees are due as ~~prescribed~~ prescribed by the board ~~are due 20 days after the end of each quarter on October 20, January 20, April 20 and July 20.~~ The board may cancel any award to a subgrantee if such reports are twice delinquent.

AUTH: 44-4-301, MCA  
IMP: 44-4-301, MCA

RATIONALE AND JUSTIFICATION: The change in (c) is necessary to address the grammatical error. The change in (d) is necessary because the reports are now due on the 5th and may change in the future. The board therefore has chosen to reference a due date as prescribed by the board, as opposed to including a specific date or timeline in the rule.

23.14.601 GENERAL DEFINITIONS (1) remains the same.

(2) "Regional plan" means the plan for providing youth detention services as required in ~~41-5-1003~~ 41-5-1903, MCA, submitted to the board from regions created under ~~41-5-812~~ 41-5-1805, MCA.

(3) "Regional planning board" means the board created to implement ~~41-5-812~~ 41-5-1805, MCA, and prepare regional plans.

(4) "Region" means the youth detention region established in ~~41-5-812~~ 41-5-1805, MCA.

(5) "Detention services" means youth detention services as defined in ~~41-5-1001~~ 41-5-1901, MCA.

AUTH: 41-5-1008, MCA

IMP: 41-5-812, 41-5-1003, MCA

RATIONALE AND JUSTIFICATION: These sections of the MCA were modified and the changes are necessary to stay consistent with the correct MCA cite.

23.14.603 REGIONAL PLAN (1) remains the same.

(2) Regional plans prepared by regional planning boards must fully describe the information required in ~~41-5-1003~~ 41-5-1903, MCA.

(3) Regional plans must be submitted to the board annually ~~by May 15~~ for the next fiscal year.

(4) through (7) remain the same.

AUTH: 41-5-1008, MCA

IMP: 41-5-1003, 41-5-1004, 41-5-1005, 41-5-1007, MCA

RATIONALE AND JUSTIFICATION: In (2), this section of the MCA was modified, so the change is necessary to stay consistent with that change. In (3), the regional plan due date now varies from year-to-year, so a specific date is no longer needed or accurate.

23.14.604 PLAN APPROVAL PROCESS (1) The regional plan submitted by the regional planning board will be ~~first~~ reviewed by the youth justice council. The youth justice council will recommend to the board whether the regional plan should be approved, modified, rejected, or terminated.

~~(2) If action is recommended to the board by the youth justice council which alters, terminates, or rejects a plan, the regional planning board may request a review of the youth justice council's recommendation by following ARM 23.14.204 through 23.14.207.~~

AUTH: 41-5-1008, MCA

IMP: 41-5-1002, 41-5-1005, MCA

RATIONALE AND JUSTIFICATION: ARM 23.14.204 – 23.14.206 are being repealed so this section no longer applies.

23.14.605 AMENDMENTS TO THE REGIONAL PLAN (1) remains the same.

(2) Modification of budget line items by ~~five~~ ten percent or less ~~of the total budget amount~~ may be approved by the regional planning board.

(3) Modifications of budget line items exceeding ~~five~~ ten percent ~~of the total budget~~ must be requested of the board in writing and approved by the board prior to adjustment of the budget.

(4) through (5)(a) remain the same.

(b) approval by the board after written notice ~~to the board~~ which describes the impact of the new detention services on the overall plan and budget.

(6) remains the same.

~~(7) A regional planning board may follow ARM 23.14.204 through 23.14.207 if its request to amend a plan is rejected.~~

AUTH: 41-5-1008, MCA  
IMP: 41-5-1003, 41-5-1004, 41-5-1005, MCA

RATIONALE AND JUSTIFICATION: For (2) and (3), the board is increasing this threshold to 10% to stay consistent with other grants and internal policy. In (7), because ARM 23.14.204 – 23.14.206 are being repealed, this section no longer applies.

23.14.606 REPORTS (1) Counties participating in regional plans must submit regular and accurate reports to the board using the ~~juvenile probation information system~~ reporting system prescribed by the board.

(2) Failure by a county or counties to use or to accurately report using the ~~juvenile probation information system~~ reporting system prescribed by the board will be reviewed by the regional planning board, which may recommend to the board that the nonreporting county or counties be prohibited from using funds provided to a region for implementing its regional plan.

(3) remains the same.

~~(4) A county or counties may request a reconsideration of the regional planning board's recommendation by following ARM 23.14.204 through 23.14.207.~~

AUTH: 41-5-1008, MCA  
IMP: 41-5-1003, MCA

RATIONALE AND JUSTIFICATION: For (1) and (2), the juvenile probation information system has been replaced by a new system and thus the reporting system will be prescribed by the board. In (4), because ARM 23.14.204 – 23.14.206 are being repealed, this section no longer applies.

23.14.1008 RECOMMENDATION OF THE APPEAL REVIEW COMMITTEE

(1) The committee must render a written recommendation suggesting that the board ~~either~~ affirm the council's decision, reverse the council's decision, or remand to the hearing examiner for additional findings.

(2) A copy of the committee's recommendation shall be delivered or mailed to each party, as well as the executive director, who will then ~~mail~~ provide a copy of the recommendation to each noncommittee board member.

AUTH: 44-4-301(2), 44-4-403(3), MCA  
IMP: 44-4-301(2), 44-4-403(3), MCA

RATIONALE AND JUSTIFICATION: The change to (1) corrects a grammatical error. The change to (2) allows for electronic correspondence of recommendation.

5. Concerned persons may submit their data, views, or arguments

concerning the proposed action in writing to: Kathy Stelling, Department of Justice, 215 North Sanders, P.O. Box 201401, Helena, MT 59620-1401; telephone (406) 444-2026; Montana Relay Service 711; fax (406) 444-3549; or e-mail [kstelling@mt.gov](mailto:kstelling@mt.gov), and must be received no later than 5:00 p.m. on March 8, 2012.

6. If persons who are directly affected by the proposed action wish to express their data, views, or arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments they have to Kathy Stelling at the above address no later than March 8, 2012.

7. If the agency receives requests for a public hearing on the proposed action from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed action; from the appropriate administrative rule review committee of the Legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. The number of persons affected is less than 250, therefore a public hearing will be held if 25 or more people request one.

8. An electronic copy of this notice is available through the Department of Justice web site at <http://doj.mt.gov/agooffice/administrative-rules/>. The department strives to make the electronic copy of this notice conform to the official version of the notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the notice and the electronic version of the notice, only the official printed text will be considered. In addition, although the department strives to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems, and that a person's difficulties in sending an e-mail do not excuse late submission of comments.

9. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the contact person in 5 above, or may be made by completing a request form at any rules hearing held by the department. A copy of the interested persons request form may be printed from the Department of Justice's web site at <http://doj.mt.gov/agooffice/administrative-rules/>, and mailed to the rule reviewer.

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

By:

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STEVE BULLOCK  
Attorney General  
Department of Justice

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STUART SEGREST  
Rule Reviewer

Certified to the Secretary of State January 30, 2012.