

STATE OF NORTH DAKOTA
NORTH DAKOTA DEPARTMENT OF CORRECTIONS AND REHABILITATION

In the Matter of the McLean County Detention Center,
Washburn, North Dakota

ORDER OF NONCOMPLIANCE

This order is issued in accordance with N.D.C.C. Section 12-44.1-25.
The North Dakota Department of Corrections and Rehabilitation ("DOCR") makes the following:

Findings of Fact

I.

McLean County Detention Center ("MCDC") is a county correctional facility in Washburn, North Dakota. On November 22, 2019, DOCR correctional facility inspectors inspected MCDC in accordance with N.D.C.C. Sections 12-44.1-24 and 12-44.1-25 and current North Dakota Correctional Facility Standards. DOCR facility inspectors previously inspected the MCDC on October 16, 2018.

II.

MCDC is classified as a grade one correctional facility under N.D.C.C. Section 12-44.1-06. The facility is located at 709 6th Ave., Washburn, North Dakota. MCDC is operated under the authority of the McLean County Sheriff JR Kerzman. Assistant Jail Administrator Wade Krohmer and MCDC are under the governing authority of the McLean County Commissioners.

III.

MCDC was constructed in 2008. MCDC is in a two-story building. The detention center is on the first floor of a two-floor building.

IV.

MCDC has a maximum capacity of 30 offenders. Services available to offenders include ministry programs, medical, work release, commissary, food service, laundry, and library. Most services are delivered to the offenders, including distribution of prescribed medicines, commissary, meals (which are prepared in a full-service kitchen), and laundry.

V.

MCDC has four (4) double-occupancy cells in two (2) different units. At the time of the inspection, one (1) unit was used for female offenders, and the other unit was used for facility workers and work release. Each cell has a washbasin and a toilet. Each unit has a dayroom. A private shower with a privacy curtain is in the corner of the dayroom. The dayrooms have access to natural lighting and enough illumination for comfortable reading. The dayrooms have adequate and appropriate seating, televisions, texting devices, and inmate telephone systems. MCDC has two (2) dorms. One (1) dorm has twelve (12) beds, and the other dorm has eight (8) beds. All dorms have access to natural lighting and enough illumination for comfortable reading in the living areas.

All dorms have dayrooms with adequate and appropriate seating to allow inmates to congregate to watch television and use the inmate telephone system.

VI.

MCDC has authorized staff consisting of Assistant Jail Administrator Wade Krohmer, fourteen (14) full-time security staff, and two (2) administration staff. The facility maintains staffing levels of one (1) staff to ten (10) offenders. The average length of stay for inmates is nineteen (19) days. Four hundred and sixty-one (461) male offenders and one hundred and eighty-five (185) female offenders were processed during 2018.

IX.

MCDC does not review its policies annually, and the correctional facility inspectors identified several MCDC policies that do not accurately reflect the facility's current procedures.

X.

MCDC does not have a classification system and does not follow subsections 3 and 4 of N.D.C.C. Section 12-44.1-09.

XI.

MCDC has a suicide plan. However, it does not provide suicide prevention training annually. MCDC staff were not aware of the suicide prevention plan.

XII.

MCDC has inmate observation policies and procedures. However, MCDC does not follow its policies and procedures for observation of inmates. Inspectors requested all cases in which inmates had been put on observation during 2019. MCDC is not able to provide documentation for all inmates who had been put on observation. MCDC is only able to provide documentation for three (3) cases in which inmates were placed on observation. MCDC policy requires irregular fifteen-minute observation intervals. In the cases provided, MCDC staff observed inmates on irregular hourly intervals, instead of fifteen-minute intervals. MCDC policy requires in-person checks. However, staff indicated checks may be done by camera instead of in person. MCDC policy requires monitoring by medical staff. However, medical staff is not being made aware of those on observation and does not provide monitoring. Additionally, the documentation MCDC provided did not contain the required elements, such as reason for removal from observation.

MCDC is not consistently placing inmates on suicidal watch when needed. For example, the facility inspectors were informed that MCDC has not placed any offenders on suicidal watch within the last year. However, facility inspectors were made aware of an offender who was in the facility within the two (2) weeks prior to the inspection who was provided a suicide smock due to concerns about self-harm but was not placed on suicide watch.

XIII.

MCDC completes only one count per twenty-four-hour period.

XIV.

Although MCDC has a policy and procedure for inventory of equipment, MCDC does not maintain a practice of inventorying equipment accurately. Seven (7) tools at MCDC were not on its inventory system. During November, there were five (5) times when tools were signed into the facility but were never signed out. MCDC does not have a policy, procedure, or practice for maintaining an inventory of needles or keys issued to staff.

XV.

MCDC does not have post orders for every correctional officer post. The one post order MCDC produced did not accurately specify the required duties and procedures.

XVI.

MCDC could not produce any evidence that staff reads, signs, and dates the post orders annually, before beginning to work a post that the staff has not been assigned in the previous 120 days, or when the post orders are updated or amended.

XVII.

MCDC does not have a written policy and procedure governing the transfer of a discharge summary of an inmate's medical, dental, mental health, and forensic records when the inmate is transferred to another correctional facility. Medical staff is not made aware of transfers and do not recall generating any files for transfers.

XVIII.

MCDC does not complete HIV testing of inmates who are convicted of a crime and imprisoned for fifteen days or more. The health care administrator does not medically screen inmates prior to their assignment to a work detail.

XIX.

MCDC was not able to provide written policy and procedures regarding medical standing orders.

XX.

MCDC has written policy and procedures for intoxication management. However, MCDC does not follow its policy and procedures. It does not have documentation that it is obtaining a medical clearance from a licensed medical provider prior to admitting someone for intoxication. MCDC places inmates identified as intoxicated on observation but does not provide the care required by its policy.

XXI.

MCDC was not able to provide written policy and procedures that address the maintenance and testing of emergency equipment.

XXII.

MCDC has an evacuation plan. However, the staff at MCDC do not know how to execute an evacuation.

XXIII.

MCDC does not have a written policy, procedure, or practice governing the storage and use of hazardous, toxic, and caustic materials. In addition, the facility does not have an accurate right-to-know manual of Safety Data Sheets available for review.

XXIV.

MCDC does not have a written policy, procedure, and practice requiring weekly health, safety, and sanitation inspections by the administrator or designee and food service manager. MCDC does not have documentation of weekly inspections and corrective actions.

XXV.

MCDC has a policy and procedure governing incoming and outgoing mail. However, the policy does not include a written notification to the inmate and sender of a rejection or a due process procedure allowing the inmate to challenge the facility's rejection.

XXVI.

MCDC's disciplinary reports do not include the specific rules violated, a formal statement of the charges, an explanation of the violation, disposition of the physical evidence, or staff and inmate witnesses and statements. MCDC's disciplinary reports suggest MCDC's practices do not meet due process requirements.

XXVII.

MCDC does not have a written policy and supporting procedures requiring all correctional officers participate in a documented orientation training program prior to independent assignment that includes the following: facility policy and procedures; all emergency procedures to include basic first aid and CPR; classification of prisoners; booking procedures, including medical and mental health screening; use of force; suicide behavior, response, intervention, and observation; victim notification in accordance with state law; and Prison Rape Elimination Act (PREA). MCDC was not able to provide documentation that employees are receiving orientation training.

XXVIII.

MCDC was unable to provide documentation to show employees received forty-eight (48) hours of training during every three-year period following the first day of January, after the date of employment.

XXIX.

MCDC does not have a written policy, procedure, and practice covering the use, issuing, storage, training, inventory, and maintenance of security equipment, weapons, and firearms.

Conclusions of Law

I.

MCDC is a county correctional center subject to N.D.C.C. Chapter 12-44.1.

II.

N.D.C.C. Section 12-44.1-24 requires the DOCR prescribe rules establishing minimum standards for the construction, operation, and maintenance of county correctional facilities, prescribe rules for the care and treatment of inmates, cause the rules and regulations be made available to inmates, and to appoint a correctional facility inspector qualified by special experience, education, or training to inspect correctional facilities. Inspection must include health and safety, fire and life safety, security, rehabilitation programs, recreation, treatment of persons confined, and personnel training.

III.

The DOCR has promulgated Correctional Facility Standards in accordance with N.D.C.C. Section 12-44.1-24 and has appointed a correctional facility inspector in accordance with the requirements of N.D.C.C. Section 12-44.1-24.

IV.

N.D.C.C. Section 12-44.1-25 authorizes the Director of the DOCR to issue a report of noncompliance if a correctional facility is in violation of any required minimum standards, applicable state or federal law, or DOCR rules for correctional facilities.

V.

Standard 4 of the North Dakota Correctional Facility Standards requires MCDC review and, when necessary, update the facility's policies and procedures at least annually. MCDC is in violation of Standard 4 of the North Dakota Correctional Facility Standards because MCDC does not review its policies annually, and the correctional facility inspectors identified several MCDC policies that do not accurately reflect MCDC's current procedures.

VI.

Standard 10 of the North Dakota Correctional Facility Standards requires facilities adopt a classification system for inmates to provide for the security, safety and order of the facility and for the safety and security of the community. If the facility has adopted a classification system approved by the DOCR, the facility is not required to comply with subsections 3, 4, and 5 of N.D.C.C. Section 12-44.1-09. MCDC is in violation of Standard 10 of the North Dakota Correctional Facility Standards because MCDC does not have a classification system and does not follow subsections 3 and 4 of N.D.C.C. Section 12-44.1-09.

VII.

Standard 31 of the North Dakota Correctional Facility Standards requires MCDC has a written suicide prevention plan that includes annual training for staff with responsibility for inmate supervision. MCDC is in violation of Standard 31 of the North Dakota Correctional Facility Standards

because it does not provide suicide prevention training annually. MCDC staff is not aware of the suicide prevention plan.

VIII.

Standard 32 of the North Dakota Correctional Facility Standards requires MCDC has a written policy and procedure for inmate observation. Trained staff shall personally observe each inmate during each hourly period on an irregular basis. Trained staff shall personally observe inmates who exhibit suicidal tendencies, self-destructive behavior, emotional distress, or have specialized medical problems at more frequent intervals as the inmate's condition requires. Documentation of inmates in observation must include: a. Reason for placement; b. Staff assigned to supervise; c. Location, date, time, activities, and condition of the inmate at each check; d. Actions by agency to provide specialized outside services for the inmate; and e. Reason for removal from observation.

MCDC is in violation of Standard 32 of the North Dakota Correctional Facility Standards because MCDC does not follow its policies and procedures for observation of inmates. Inspectors requested all cases in which inmates had been put on observation during 2019. MCDC is not able to provide documentation for all inmates who had been put on observation during 2019. MCDC is only able to provide documentation for three cases in which inmates were placed on observation. MCDC policy requires irregular fifteen-minute observation intervals. In these three cases, MCDC staff observed inmates on irregular hourly intervals, instead of fifteen-minute intervals. MCDC policy requires in-person checks. However, staff indicated checks may be done by camera instead of in person. MCDC policy requires monitoring by medical staff. However, medical staff is not being made aware of those on observation and does not provide monitoring. Additionally, the documentation MCDC provided did not contain the required elements, such as reason for removal from observation.

MCDC is not consistently placing inmates on suicidal watch when needed. For example, the facility inspectors were informed that MCDC has not placed any offenders on suicidal watch within the last year. However, facility inspectors were made aware of an offender who was in the facility within the two (2) weeks prior to the inspection who was provided a suicide smock due to concerns about self-harm but was not placed on suicidal watch.

IX.

Standard 34 of the North Dakota Correctional Facility Standards requires MCDC has written policy and procedures for documented formal counts of inmates a minimum of three formal counts within each 24-hour period. MCDC is in violation of Standard 34 of the North Dakota Correctional Facility Standards because MCDC completes only one count per twenty-four-hour period.

X.

Standard 38 of the North Dakota Correctional Facility Standards requires MCDC has a written policy, procedure, and practice for a current inventory, security, control and use of keys, tools, culinary and medical supplies and equipment. MCDC is in violation of Standard 38 of the North Dakota Correctional Facility Standards because MCDC does not maintain a practice of inventorying equipment accurately. Seven (7) tools present at MCDC were not on its inventory system. During November, there were five (5) times when tools were signed in but were never signed out. MCDC does not have a policy, procedure, or practice for maintaining an inventory of needles or keys issued to staff.

XI.

Standard 39 of the North Dakota Correctional Facility Standards requires MCDC has written post orders for every correctional officer post. Written post orders must specify the duties of each post and the procedures that must be followed to carry out the assignment. All post orders shall be reviewed annually and updated or amended as needed. MCDC is in violation of Standard 39 of the North Dakota Correctional Facility Standards because MCDC does not have post orders for every correctional officer post. The one post order MCDC produced did not accurately specify the required duties and procedures.

XII.

Standard 40 of the North Dakota Correctional Facility Standards requires MCDC staff read, sign and date the post orders annually, before beginning to work a post that the staff has not been assigned in the previous 120 days, and when the post orders are updated or amended. MCDC is in violation of Standard 40 of the North Dakota Correctional Facility Standards because MCDC could not produce any evidence that staff reads, signs, and dates the post orders annually, before beginning to work a post that the staff has not been assigned in the previous 120 days, or when the post orders are updated or amended.

XIII.

Standard 45 of the North Dakota Correctional Facility Standards requires MCDC has a written policy and procedure governing the transfer of a discharge summary of the inmate's medical, dental, mental health and forensic records when the inmate is transferred to another correctional facility. MCDC is in violation of Standard 45 of the North Dakota Correctional Facility Standards because MCDC does not have a written policy and procedure governing the transfer of a discharge summary of an inmate's medical, dental, mental health and forensic records when the inmate is transferred to another correctional facility. Medical staff is not made aware of transfers and do not recall generating any files for transfers.

XIV.

Standard 56 of the North Dakota Correctional Facility Standards requires, in relevant part, that MCDC conduct a health appraisal that includes testing for the human immunodeficiency virus (HIV) in accordance with N.D.C.C. Section 23-07-02.1 and medical screening by the facility health care provider prior to assigning inmates to a work detail. MCDC is in violation of Standard 56 of the North Dakota Correctional Facility Standards because MCDC does not complete HIV testing of inmates who are convicted of a crime and imprisoned for fifteen days or more. The MCDC health care administrator does not medically screen inmates prior to assigning inmates to a work detail.

XV.

Standard 57 of the North Dakota Correctional Facility Standards requires MCDC establish a written policy and procedures to carry out the orders of the health authority relating to an inmate's medical care. MCDC is in violation of Standard 57 of the North Dakota Correctional Facility Standards because MCDC is not able to provide written policy and procedures regarding medical standing orders.

XVI.

Standard 59 of the North Dakota Correctional Facility Standards requires MCDC has a written policy and procedure for intoxication management if the facility holds persons who appear intoxicated or under the influence of alcohol or controlled substances. Before a facility may hold a person for intoxication a licensed medical provider must provide a medical clearance signed by a physician. MCDC is in violation of Standard 59 of the North Dakota Correctional Facility Standards because MCDC does not follow its policy and procedures. It does not have documentation that it is obtaining a clearance from a licensed medical provider prior to admitting someone for intoxication. MCDC places inmates identified as intoxicated on observation but does not provide the care required by its policy.

XVII.

Standard 60 of the North Dakota Correctional Facility Standards requires MCDC has written policy and procedures that address the maintenance and testing of emergency equipment. MCDC is in violation of Standard 60 of the North Dakota Correctional Facility Standards because MCDC is not able to provide a written policy and procedures that address the maintenance and testing of emergency equipment.

XVIII.

Standard 62 of the North Dakota Correctional Facility Standards requires MCDC has a written evacuation plan prepared in case of fire or major emergency and the plan must include procedures. MCDC is in violation of Standard 62 of the North Dakota Correctional Facility Standards because MCDC staff did not know how to execute an evacuation.

XIX.

Standard 64 of the North Dakota Correctional Facility Standards requires MCDC has a written policy, procedure, and practice governing the storage and use of hazardous, toxic, and caustic materials. These policies and procedures must be in accordance with all applicable laws and regulations. A right-to-know manual of Safety Data Sheets must be available for review. MCDC is in violation of Standard 64 of the North Dakota Correctional Facility Standards because MCDC does not have a written policy, procedure, or practice governing the storage and use of hazardous, toxic, and caustic materials. In addition, the facility does not have an accurate right-to-know manual of Safety Data Sheets available for review.

XX.

Standard 76 of the North Dakota Correctional Facility Standards requires MCDC has a written policy, procedure and practice requiring weekly health, safety, and sanitation inspections by the administrator or designee and food service manager. Records of the inspections and any corrective actions shall be maintained in the facility. MCDC is in violation of Standard 76 of the North Dakota Correctional Facility Standards because MCDC does not have a written policy, procedure, and practice requiring weekly health, safety, and sanitation inspections by the administrator or designee and food service manager. MCDC does not have documentation of weekly inspections and corrective actions.

XXII.

Standard 83 of the North Dakota Correctional Facility Standards requires MCDC has a written policy and procedure governing incoming and outgoing mail, including electronic mail, and legal or official mail. In each case when it is necessary to reject or remove any item of incoming or outgoing mail, Standard 83 requires, in relevant part, a record be made that includes written notification to the inmate and sender and a due process procedure allowing the inmate to challenge the facility's rejection. MCDC is in violation of Standard 83 of the North Dakota Correctional Facility Standards because the policy does not include a written notification to the inmate and sender of mail rejection and a due process procedure allowing the inmate to challenge MCDC's rejection.

XXIII.

Standard 94 of the North Dakota Correctional Facility Standards requires MCDC disciplinary reports include: a. Specific rules violated; b. A formal statement of the charge, or charges; c. An explanation of the violation, including: who, what, when, where, why and how, and any immediate action taken by staff; d. Disposition of any physical evidence; e. Staff and inmate witnesses and statements; and f. Date and time the report is completed and reporting staff signature. MCDC is in violation of Standard 94 of the North Dakota Correctional Facility Standards because MCDC's disciplinary reports do not include the specific rules violated, a formal statement of the charges, an explanation of the violation, disposition of the physical evidence, or staff and inmate witnesses and statements. MCDC's disciplinary reports suggest that MCDC's practices do not meet due process requirements.

XXIV.

Standard 103 of the North Dakota Correctional Facility Standards requires MCDC has a written policy and supporting procedures requiring all correctional officers participate in a documented orientation training program prior to independent assignment that includes: facility policy and procedures; all emergency procedures to include basic first aid and CPR; classification of prisoners; booking procedures, including medical and mental health screening; use of force; suicide behavior, response, intervention, and observation; victim notification in accordance with state law; and Prison Rape Elimination Act (PREA). MCDC is in violation of Standard 103 of the North Dakota Correctional Facility Standards because MCDC does not have a written policy and supporting procedures requiring all correctional officers participate in a documented orientation training program prior to independent assignment

XXV.

Standard 104 of the North Dakota Correctional Facility Standards requires all MCDC staff who work in direct and continuing contact with inmates receive training determined and approved by the North Dakota Peace Officer Standards and Training (P.O.S.T.) Board, and receive an additional forty-eight (48) hours of training during every three-year period following the first day of January after the date of employment. MCDC is in violation of Standard 104 of the North Dakota Correctional Facility Standards because MCDC is unable to provide documentation to show employees received forty-eight (48) hours of training during every three-year period following the first day of January after the date of employment.

XXVI.

Standard 106 of the North Dakota Correctional Facility Standards requires MCDC has a written policy, procedure, and practice covering the use, issuing, storage, training, inventory, and maintenance of security equipment, weapons, and firearms. MCDC is in violation of Standard 106 of the North Dakota Correctional Facility Standards because MCDC does not have a written policy, procedure, and practice covering the use, issuing, storage, training, inventory, and maintenance of security equipment, weapons, and firearms.

XXVII.

MCDC's violations of North Dakota Correctional Facility Standards present a danger to the health and safety of inmates, staff, law enforcement, visitors, and the public and justify an order of noncompliance.

ORDER OF NONCOMPLIANCE

Based on the above Findings of Fact and Conclusions of Law, DOCR issues this Order of Noncompliance.

IT IS ORDERED, in accordance with N.D.C.C. Section 12-44.1-25, that MCDC comply with the following requirements:

1. MCDC shall submit all policies and procedures related to correctional facility operations and management required by state law and by all North Dakota Correctional Facility Standards to the DOCR for review and recommendation within sixty (60) days.
2. MCDC shall continue to submit all revised and new correctional facility operations and management policies and procedures and post orders to the DOCR for review and recommendation during the period in which this order is in effect.
3. MCDC shall provide documentation that its employees have completed required suicide prevention training within sixty (60) days of service of this order.
4. MCDC shall provide accurate and complete training documentation within sixty (60) days of service of this order. The documentation must include for each employee (a) the status of completion of orientation requirements and (b) the status of completion of annual and ongoing training requirements. MCDC and DOCR shall mutually agree upon a reasonable timeline for completing missing training.
5. MCDC shall be subject to regular inspections and monitoring by DOCR correctional facility inspectors. MCDC shall pay to the DOCR the reasonable and actual costs incurred by the DOCR for inspections and monitoring.

IT IS FURTHER ORDERED THAT MCDC shall remain subject to this Order of Noncompliance for a period of not less than eighteen (18) months from the date of this order.

IT IS FURTHER ORDERED THAT this order shall remain subject to the DOCR's continuing jurisdiction and authority under N.D.C.C. Chapter 12-44.1 to continue to inspect the MCDC and establish and amend or modify conditions and requirements the DOCR may determine are necessary for the safety of the inmates, staff, visitors, and the public based upon its inspections.

IT IS FURTHER ORDERED THAT if MCDC fails to comply with any of the requirements of this order, any of the requirements of the DOCR, or any of the requirements of the North Dakota Correctional Facility Rules and N.D.C.C. Chapter 12-44.1, the DOCR may exercise its authority under N.D.C.C. Section 12-44.1-25 and order MCDC be reclassified or closed.

Dated this ~~6th~~ day of January, 2020.

A handwritten signature in cursive script, reading "Leann K. Bertsch", written over a horizontal line.

Leann K. Bertsch

Director

North Dakota Department of Corrections and Rehabilitation