IN THE SUPREME COURT OF THE STATE OF MONTANA
Case No. DA 13-0057

STATE OF MONTANA,

Plaintiff and Appellant,

v.

THOMAS LENARD MADSEN,

Defendant and Appellee.

On appeal from the Montana Eighteenth Judicial District Court
Gallatin County – Case No. DC-12-168A
The Honorable Holly Brown

AMICUS CURIAE BRIEF OF AMERICAN CIVIL LIBERTIES UNION OF MONTANA IN SUPPORT OF PLAINTIFF-APPELLANT

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I. Introduction and Summary of Argument.

The ACLU of Montana respectfully submits this amicus brief to provide its views regarding the meaning of "prisoner," as used in §45-5-204, MCA. The District Court held that a 17-year old female handcuffed, in belly chains and leg restraints in police custody in a police interrogation room was not a "prisoner." The District Court concluded "the Legislature intended the word 'prisoner' as used in §45-5-204, MCA, to mean an individual who is serving a sentence at the State prison or another State facility as the result of a conviction." D.C. Doc. 45, p. 11. As a result, the District Court dismissed charges against Appellee, a deputy sheriff, under §45-5-204, MCA, who allegedly threatening the restrained juvenile, grabbed her neck and slammed her against a wall. *See* D.C. Doc., 1, 3, 43.

This holding is inconsistent with the plain meaning of "prisoner" to include all individuals in custody or restrained whose liberty is deprived, without regard to whether the person is sentenced and incarcerated in a state facility. Without more explicit statutory language limiting the definition, an inclusive definition in keeping with the plain language and established understanding of the term "prisoner" is appropriate.

Even if the term "prisoner" is ambiguous, the statute's legislative history, other MCA provisions, and cannons of statutory interpretation establish the legislature intended the term "prisoner" to include all individuals in custody or restraints who are deprived of their liberty by law enforcement officers. §45-5-204, MCA, merged two RCM statutes that specifically applied to individuals held in police custody and not yet charged or arrested. The legislative history explicitly states that §45-5-204, MCA was intended to retain all protections set forth in these predecessor statutes. Similarly, other MCA provisions refer to individuals held in county jails as "prisoners."

Stripping juveniles and pre-trial detainees from §45-5-204, MCA's heightened protections against assault violates their right to equal protection of the law. Arrestees, minors, whether pre-trial or adjudicated, adult pre-trial detainees and convicted prisoners in county jails have the right to be free from excessive use of force and unconstitutional conditions of confinement. Statutory interpretation rules require an explicit legislative statement showing intent to strip such protections. In this case, the legislature stated its intent to retain these protections, rendering the District Court's legislative intent analysis flawed.

II. Factual Background

The ACLU of Montana refers the Court to Appellant's statement of facts. The ACLU of Montana notes that it is undisputed that on February 9, 2011, minor K.J. was held in the Gallatin County Sheriff's Department in an interview room, and was restrained with handcuffs, a belly chain and leg irons. Jan. 10, 2013 Transcript, 3:25-4:1.

A person in Montana can be incarcerated in multiple circumstances, including police custody prior to arrest, arrested in police custody, charged and held as pre-trial detainee, convicted of misdemeanor and serving time in county jail, convicted of a felony but not yet sentenced, or sentenced and serving time in a Department of Corrections ("DOC") facility or prison. Once charged, an individual can be held in a county jail, a county juvenile detention center, tribal jails, and Bureau of Indian Affairs jails. One sentenced, an individual can remain in a county jail or be transferred to a DOC facility, such as WATCH or START, one of several regional prisons in county jails and administered by counties, the Montana State Prison, the Montana Women's Prison, Crossroads Corrections Center, a private prison, or one of several privately-run DOC pre-release centers.

Adult males sentenced to the DOC may go between the Montana State Prison, Crossroads and regional prisons. Often, an individual sentenced to the DOC and released to probation, parole or supervision can end up back in a county

jail awaiting a revocation hearing. After an individual is sentenced to the DOC, he or she often spends time in an assessment facility, such as the Missoula Assessment and Sanctions Center, which is in the Missoula County jail, or Passages, a privately-run DOC facility for females.

III. Legal Argument

A. The plain meaning of "prisoner" includes all individuals restrained or in custody whose liberty is deprived by law enforcement officers.

This Court reviews questions of statutory interpretation as questions of law to determine whether the District Court's interpretation of the law is correct. *Langemo v. Montana Rail Link, Inc.*, 2001 MT 273, ¶18, 307 Mont. 293, 38 P.3d 782. A judge's role when interpreting a statute is to "simply ascertain and declare what is in terms or substance contained therein, not to insert what has been omitted or to omit what has been inserted." §1-2-101, MCA. Where legislative intent can be ascertained from the plain meaning of the words used, "the plain meaning controls and this Court need go no further nor apply any other means of interpretation." *Gulbrandson v. Cary* (1995), 272 Mont. 494, 500, 901 P.2d 573, 577. Only where language is ambiguous does the Court look to legislative history. *Id.* Statutory terms "must be given the natural and popular meaning in which they are usually understood." *Jones v. Judge* (1978), 176 Mont. 251, 254, 577 P.2d

846, 848; *Maney v. Louisiana Pacific Corp.*, 2000 MT 366, ¶19, 202 Mont. 398, 15 P.3d 962 (2000).

Multiple dictionaries define "prisoner" to include individuals whose liberty is deprived regardless of whether they are in prison, which establishes the natural and popular meaning of the term. The Merriam-Webster definition of "prisoner" is "a person deprived of liberty and kept under involuntary restraint, confinement, or custody" then defines a subgroup "esp: one on trial or in prison." D.C. Doc. 45, p. 5. This includes both pre-trial detainees ("one on trial") and convicted prisoners. The Merriam Webster second definition clarifies that a person need not be in prison, but be "someone restrained **as if** in prison." *Id.* The American Heritage Dictionary definition also provides a general definition of "prisoner" as "[a] person held in custody, captivity, **or** a condition of forcible restraint," and sets forth the same subgroup of persons "especially while **on trial** or serving a prison sentence." *Id.* American Heritage's second definition defines prisoner as "[o]ne deprived of freedom of expression or action." *Id.* All of these define "prisoner" without requiring a person be convicted and incarcerated in a state facility.

With regard to legal-specific definitions, the Court sets forth Black's Law Dictionary's definition: "1. A person who is serving time in prison. 2. **A person who has been apprehended by a law-enforcement officer and is in custody,**

regardless of whether the person has yet been put in prison. " D.C. Doc. 45, pp. 5-6 (emphasis added). Black's definition includes the following treatise excerpt:

> While breach of prison, or prison breach, means breaking out of or away from prison, it is important to have clearly in mind the meaning of the word 'prison.' If an officer arrests an offender and takes him to jail the layman does not think of the offender as being 'in prison' until he is safely behind locked doors, **but no one hesitates to speak of him as a 'prisoner' from the moment of apprehension. He is a prisoner because he is 'in prison ... whether he were actually in the walls of a prison, or only in the stocks, *or in the custody of any person who had lawfully arrested him....***
> '" Rollin M. Perkins & Ronald N. Boyce, *Criminal Law* 566 (3d ed. 1982) (quoting 2 Hawk. P.C. ch. 18, § 1 (6th ed. 1788)).

PRISONER, Black's Law Dictionary (9th ed. 2009) (emphasis added), Exhibit A.

Additionally, §45-5-204, MCA's use of the term "a **person** who commits this offense," as opposed to "corrections officer," shows there are no limitations on the title or custodial capacity under which an individual can be subject to criminal liability under the statute. The statute broadly applies to any "person" who is "responsible for the care or custody of a prisoner," which plainly includes custodial situations similar to the situation in this case.

Courts regularly use the term "prisoner" to refer to individuals incarcerated in county jails as pre-trial detainees and convicted prisoners, which further establishes the plain meaning of the term. *See e.g., Randolph v. Donaldson*, 13 U.S. 76 (1815); *Ex parte Shores,* 195 F. 627 (N.D. Iowa, 1912); *Hirst v. Gertzen*, 676 F.2d 1252, 1254 (9th Cir. 1982) (discussing a "**deputy sheriff**, employed by

the defendants despite a history of violent behavior towards **prisoners**."); *Pretty On Top v. City of Hardin* (1979), 182 Mont. 311, 315, 597 P.2d 58, 61 ("[a] **sheriff** owes to a **prisoner** placed in his custody a duty to keep the prisoner safely and free from harm . . . and to treat him humanely and refrain from oppressing him"); *Moralli v. Lake County, Mont.* (1992), 255 Mont. 23, 28, 839 P.2d 1287, 1290 ("**Lake County** had a duty to exercise reasonable and ordinary care for the life and health of the **prisoner**, to keep her safe and protect her from unnecessary harm").

An interpretation of "prisoner" that excludes a minor in handcuffs, belly chains and leg irons detained in police custody would render 45-5-204, MCA, absurd as applying to only a tiny fraction of individuals whose liberty is deprived by law enforcement while restrained or in custody. It would omit not only individuals in police custody and arrestees, who like here, are held against their will in physical restraints, but also all pre-trial detainees and all convicted prisoners in county jails and private prisons. Why would the legislature omit these groups, particularly when they are similarly situated to prisoners in state facilities in that their liberty is deprived and they are subject to physical restraint in the custody of law enforcement? Once an individual is sentenced to the DOC, he can spend a significant amount of time in a county jail or privately run assessment center or private prison. It is nonsensical that such individuals are entitled to §45-5-204,

MCA's protections in a DOC facility, but not in one of the many non-DOC facilities in which DOC prisoners spend significant time.

Such an absurd interpretation contradicts basic tenets of statutory interpretation. *See State v. Letasky*, 2007 MT 51, ¶11, 336 Mont. 178, 152 P.3d 1288 ("[s]tatutory construction should not lead to absurd results if a reasonable interpretation can avoid it"); *State v. McGowan*, 2006 MT 163, ¶15, 332 Mont. 490, 139 P.3d 841. One would expect §45-5-204, MCA, to explicitly specify if it only applied to sentenced individuals in state facilities, thereby excluding the majority of incarcerated individuals in Montana.

B. §45-5-204's legislative history, other MCA provisions and cannons of statutory interpretation require a broad definition of "prisoner."

When interpreting ambiguous statutory language, courts are obligated to construe statutes in a manner that will preserve the parties' constitutional rights. *In re A.R.A.* (1996), 277 Mont. 66, 70, 919 P.2d 388, 391 ("it is paramount that we give such construction to the statute as will preserve the constitutional rights of the parties"). This Court should look to the overarching ramifications of the District Court's holding beyond the bounds of this case. *See Mills v. State Board of Equalization* (1934), 97 Mont. 13, 33 P.2d 563 ("in determining the validity of a statute, the question is not what has been done under the statute, but what may be done under it"); *State v. Board of Com'rs of Cascade County* (1931), 89 Mont. 37,

296 P. 1, 15 ("where the language used is not clear, the court ought to consider the effect and consequences which will follow its determination").

While the alleged victim here was a juvenile in police custody not yet arrested or charged, the District Court stripped other individuals, including arrestees, pre-trial detainees and convicted prisoners in non-state facilities, of §45-5-204, MCA's protections. However, a review of the legislative history, other MCA provisions, and the constitutional implications of the District Court's ruling make clear that the legislature intended to protect all of these groups.

1. Legislative history of §45-5-204, MCA, establishes that §45-5-204 was intended to include a broad definition of "prisoner."

In 1973, §45-5-204, MCA, was enacted to replace 94-3917-18, RCM 1947. 94-3917, RCM 1947 stated:

> **Inhumanity to prisoners.** Every officer who is found guilty of willful inhumanity or oppression toward any prisoner under his care or in his custody, is punishable by fine not exceeding two thousand dollars, and by removal from office.

94-3917, RCM 1947, attached as Exhibit B.

The definition of "officer" in this statute was not limited to corrections officers in state facilities, but was intended to include public officers generally, such as sheriffs and constables. *See* 46 C.J. Officers, §§147, et seq (1928), attached as Exhibit C. As such, "prisoner" in 94-3917, RCM 1947, necessarily was not limited to convicted prisoners in state facilities.

94-3918, RCM 1947, stated:

> **Confessions obtained by duress or inhuman practices.** It shall be unlawful for any **sheriff, constable, police officer, or any person charged with the custody of any one accused of crime, of whatever nature,** or with the violation of a municipal ordinance, to frighten or attempt to frighten by threats, torture, or attempt to torture, or **resort to any means of an inhuman nature,** or practice what is commonly known as the "third degree" in order to secure a confession from such person.

94-3918, RCM 1947, Exhibit. B.

The plain language of these statutes shows their intent to protect individuals whose liberty had been deprived in the custody of law enforcement officers generally (94-3917), and to protect individuals in custody from making forced confessions specifically (94-3918). *See Dryman v. State* (1961), 139 Mont. 141, 143, 361 P.2d 959, 961 (interpreted 94-3918, RCM 1947 to reflect the importance of ensuring a person who is innocent does not confess falsely).

The Compiler's Comments to §45-5-204, MCA, state:

> [T]his section replaces R.C.M. 1947, 'Inhumanity to prisoners' and section 94-3917, 'Inhumanity to prisoners,' and 94-3918, 'Confessions obtained by duress or inhuman practices.' **The purpose of the section is to provide more concise terminology for offenses against prisoners. Thus, the terms assault, intimidation, threat, endanger and withhold are clearer and more meaningful than "inhumanity" or "inhuman practices."**

Montana Criminal Code of 1973 Annotations, p. 174, attached as Exhibit D.

The Annotator's Note to §45-5-204, MCA, states "**[w]hile including all conduct that was prohibited by prior law**, this section is both more concise and more comprehensive." *Id.* This makes clear that §45-5-204, MCA, was designed

to include "all conduct that was prohibited" by 94-3917-18, RCM 1947, which includes inhuman practices against uncharged and unsentenced detainees to obtain confessions, and the goal of §45-5-204, MCA, was simply provide "more concise terminology," through use of the word "assault" and other terms.

Despite the Compiler's Comments and Annotator's Note, the District Court found the omission of "inhuman practices" and "any person charged with the custody of any one accused of crime," meant the legislature intended to exclude protections from inhuman practices for individuals not sentenced and incarcerated in state facilities. DC Doc. 45, pp. 10-11. This contradicts the specific explanation set forth in the Compiler's Comments that §45-5-204, MCA, served only to change terminology and not to omit protections. The District Court impermissibly substituted its discretion for the legislature's clearly expressed intent and mandate. *See State ex rel Burns v. Lacklen* (1995), 129 Mont. 243, 253, 284 P.2d 998, 1004; *Fergus Motor Co. v. Sorenson* (1925), 73 Mont. 122, 123, 5 P. 422, 426.

2. Other MCA provisions require a broad definition of "prisoner."

The District Court analyzed other MCA provisions and concluded that "inmate" included all individuals held in a correctional facility, including county jails and detention centers, and that "prisoner" was a more narrow definition used by the legislature to refer to convicted individuals incarcerated in state facilities.

However, the District Court pointed to no MCA provision (and indeed no provision exists) that sets forth or even suggests the restrictive definition of "prisoner" set forth by the District Court.

The District Court reasoned that §7-32-2208, MCA, distinguishes between an "inmate" and a "prisoner." In fact, this provision does not define either term, and does not require a prisoner be convicted and incarcerated in a state facility. In *Prindel v. Ravalli County*, 2006 MT 62, 33 P.3d 165, 331 Mont. 338, this Court interpreted §7-32-2208, MCA's use of the term "prisoner" to include an individual sentenced to 10 days of county jail time. Similarly, §46-18-701, MCA, refers to "prisoner" as an individual sentenced to "confinement in county jail." In §§46-18-702 and 704, MCA, the legislature repeatedly refers to an individual sentenced to time in a county jail who is on a work release program as a "prisoner." Similarly, "offender" is defined as "a person who has been or is liable to be arrested, charged, convicted or punished for a public offense." §45-2-101(41), MCA. Why would some offenders whose liberty is deprived receive §45-5-204, MCA's heightened protections and others not? These statutory references establish that "prisoner" includes individuals in custody, arrestees, pre-trial detainees and convicted individuals in county jails and non-state facilities.

3. Equal protection implications of the District Court's categorical exclusion of all juveniles and pre-trial detainees under "prisoner."

As discussed above, courts are obligated to construe statutes in a manner that preserves the parties' constitutional rights. *In re A.R.A.*, 277 Mont. 66, 70, 919 P.2d 388, 391. The District Court's holding infringes the equal protection rights of juveniles and pre-trial detainees similarly situated to convicted prisoners in state facilities by denying them §45-5-204, MCA's heightened protection against assault, which violates Article II, §4 of the Montana Constitution.

Juvenile prisoners are similarly situated to adult prisoners, if not further disadvantaged based on their age. After being charged, minors are not "sentenced," but "adjudicated" by youth court. The District Court concluded this technicality resulted in a total exclusion of juveniles under "prisoner." D.C. Doc 45, p. 14. Denial of §45-5-204, MCA's heightened protections infringes upon these groups' right to be free from assault while in custody and care of government actors, which is a fundamental right that triggers strict scrutiny. *See Matter of S.L.M.* (1997), 287 Mont. 23, 32, 951 P.2d 1365, 1371 ("[w]hen the legislation in question infringes upon a fundamental right or discriminates against a suspect class, we employ the most stringent standard, strict scrutiny").

Minors are protected by Article II, §15 of the Montana Constitution, which states "[t]he rights of persons under 18 years of age shall include, but not be limited to, all the fundamental rights of this Article unless specifically precluded

by laws which enhance the protection of such persons." Mont. Const, art. II, §15. In *Matter of S.L.M.,* this Court interpreted this provision as follows:

> Clearly under Article II, Section 15, minors are afforded full recognition under the equal protection clause and enjoy all the fundamental rights of an adult under Article II. **Furthermore, if the legislature seeks to carve exceptions to this guarantee, it must not only show a compelling state interest but must also show that the exception is designed to enhance the rights of minors.**

S.L.M., 287 Mont. at 35, 951 P.2d at 1372 (emphasis added).

§45-5-204, MCA, has neither espoused a compelling state interest nor shown excluding minors from the term "prisoner" would protect them. Indeed, excluding them reduces their rights and protections. §45-5-204, MCA, cannot be read to exclude the most vulnerable prisoners without an explicit exclusion.

The District Court's exclusion of adult pre-trial detainees in §45-5-204, MCA's definition of "prisoner" strips them of the heightened protection against assault set forth in the statute, and as such violates their right to equal protection of the laws with no justification. "**All prisoners, convicted or detained**, '[retain] all rights of an ordinary citizen except those expressly or by necessary implication taken from [them] by law.'" *Rhem v. Malcolm*, 371 F.Supp. 594 (S.D.N.Y. 1974). Specifically, **"[p]risoners, whether detainees or convicts, are constitutionally entitled to be free of mistreatment by their custodians and to be protected from harm."** *Id.* at 628 (emphasis added). *See e.g., Lock v. Jenkins*, 641 F.2d

488, 498 (7th Cir. 1981) (pretrial detainees "have been denied equal protection of the laws by being held under significantly more burdensome conditions than convicted prisoners in the absence of any justification for such treatment of each individual") (citations omitted).

Even though pre-trial detainees and convicted prisoners must bring constitutional claims under different section of U.S. constitution, the same test applies. *See Chief Goes Out v. Missoula County*, CV 12-155-M-DWM, 2013 WL 139938, 5 (D. Mont. Jan. 10, 2013) ("[c]ourts apply the same standards to pretrial detainees' claims under the Fourteenth Amendment that they apply to convicted inmates' claims under the Eighth Amendment" and therefore, adult and juvenile pre-trial detainees can represent a class that includes convicted prisoners). The District Court drew an arbitrary distinction between the two that is inconsistent with this paradigm of commensurate rights. There is no justification to deprive these similarly situated individuals of §45-5-204, MCA's protections.

IV. CONCLUSION

For the reasons set forth herein, the District Court's opinion should be reversed.

Respectfully submitted this 28th of March, 2013,

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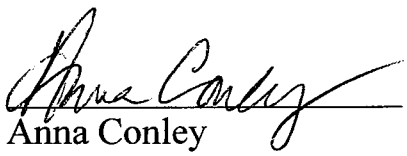
CERTIFICATE OF COMPLIANCE

I hereby Certify that the foregoing brief was prepared in a Times New Roman 14-point font, which is proportionately spaced. Pursuant to Mont. R. App. P. 11(4)(a) the document contains fewer than 5,000 words, and pursuant to this Court's March 12, 2013 order, less than 15 pages, exclusive of the Cover Page, Table of Contents, Table of Authorities, the Certificate of Service, and this Certificate of Compliance.

This 28th day of March, 2013.



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This 28th day of March, 2013.

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