

South Dakota Corrections Commission Meeting
December 2, 2008
Capital Building, Pierre
LRC Room 468

Members Present: Representative Garry Moore, Commission Chair; Senator Ken Albers, Commission Vice-Chair; Committee Members: Judge John Brown, Representative Carol Pitts, Senator Julie Bartling, Paul Aylward and Brad Drake.

Others Present: Tim Reisch, Secretary of Corrections; Scott Bollinger, Director of Operations; Brady Kerkman, Policy & Compliance Manager; Michael Winder, Communications & Information Manager; Ben Merrill, Bureau of Finance & Management; Carson Walker, Associated Press and Bob Mercer.

Members Absent: Judge Kathleen Caldwell and George Prest.

Agenda Item Number One: Review/Approval of minutes from July Meeting:

Chairman Moore called the meeting to order at 8:30 am and asked for the approval of the minutes from the July meeting.

Judge Brown moved for approval of the July minutes.

Second by Paul Aylward, minutes approved by all.

Agenda Item Number Two: Update on the closing of the Redfield Minimum Unit:
(See handout)

Secretary Reisch gave update of the closing of the Redfield Minimum Unit (RMU). Discussion was held at the last meeting in regards to this issue. There have been thirteen (13) FTE stationed at Redfield since 1996 with one (1) additional staff who assists with the State Fair. In an effort to be more cost effective and in hopes to place offenders closer to families and provide more employment opportunities, the closing of the Redfield Minimum Unit came to the forefront. The FY 2010 budget will be reduced by \$641,537 in general funds. Currently all fourteen (14) employees located at the RMU have been hired in other capacities, either within the Department of Corrections (DOC) or in other state government departments or other agencies throughout the state. December 12th is the scheduled date for the last inmate to be transferred from the RMU, which will allow employees to begin the process of closing the unit, with our final departure schedule to occur by December 23rd. Inmates are being transferred to other units; Sioux Falls, Rapid City and the majority will be transferred to Yankton. DOC is currently renting bed space from a Sioux Falls unit for work release. It is the goal that each inmate who comes off work release will have fifteen hundred dollars (\$1500) in their pockets. The closing of the RMU will create more work release opportunities and re-focus on the success of the inmates. The inmates' earnings while on work release assist them with finding a place to live, food, and clothing. Chairman Moore asked how many inmates would be transferred to Sioux Falls; Secretary Reisch stated that a great percentage of them will be taken to the Yankton Minimum Unit (YMU). Inmates that require more care, dental, medical, etc and jobs is the reason why Sioux Falls is full. Yankton has a better opportunity to employ the inmates for work release than Redfield. The YMU has a higher number of beds. General funds came from the DHS for meals, and basic medical care. There will be a net savings (in general funds) of about two hundred thousand dollars (\$200,000), but DHS will incur additional general fund expenses when

they hire additional help to take the place of the inmate labor that will be lost. Judge Brown asked if inmates are being tracked on their success within the work release program. Secretary Reisch commented that this has been looked at in the past in regard to the Rapid City Minimum Unit. A review of the county was examined rather than the inmates released from the unit. The DOC has not reviewed the success of the work release program per unit. Many factors come into consideration, such as the economics of each community. Some companies that assisted with the DOC work release program are closing. Senator Julie Bartling asked if six hundred and forty-five thousand dollars (\$645,000) reduction will be shared between the Department of Human Services (DHS) and DOC. A line item will be placed in the DOC; meals will be budgeted out of the DOC as well as DHS will have an increase of budgeting for the increase of meals, which will give the state a slight savings. The Department of Agriculture (DOA) will have an increase as well for the State Fair. Inmates will still be provided to the DOA, but they will be required to pay for the meals and transportation costs. Chairman Moore requested an explanation of the work release program and the payments that are made to the DOC by the inmates. Secretary Reisch explained that when work release is granted, if the inmate needs medical care they pay for their own medical care. The inmates are also required to pay a per diem to defray their cost for their stay in prison eighteen dollars (\$18.00) per day, seven (7) days a week. Inmates are allowed two (2) weeks to find a job and are given a line of credit to get themselves money to start. Charging these inmates more to stay would not be beneficial, the more the state charges them the longer they tend to stay. If they are employed by private sector employment, they do not pay the \$18.00 per day; however they are charged a percentage of their salary to defray cost of incarceration. Representative Pitts asked if inmates pay for the compensation for restitution for the victims. Secretary Reisch explained that all inmates are expected to pay restitution. If they don't get it paid off while in prison, it will be a part of their parole plan.

Agenda Item Number Three: Update on the temporary Rapid City Minimum Unit:

(See handout)

Secretary Reisch discussed the handout with the pictures of the temporary unit in Rapid City. He went on to reiterate that this facility opened February 24, 2004 with an initial intent to stay there for eighteen (18) months until the permanent unit was built the following year. As a result of various challenges with land matters and economics, the construction continues to be put on hold. In the 2007 legislative session, the DOC sponsored a bill to authorize the purchase the temporary unit and 2 adjacent lots to the north. This was met with resistance from adjacent property owners and as a result the bill did not pass. The land immediately to the south of the landfill was then considered. A survey showed the land to be safe, so DOC proceeded to get cost estimates relating to construction of the project on this site. A bill to the new unit was expected to be brought forward during the 2009 legislative session; however, due to the current national economic crisis DOC does not intend to introduce legislation in the upcoming legislative session.

Because the new unit would not have been completed until the fall of 2010, and we needed space for unit staff, medical staff and programming, an addition was constructed on the temporary unit. Representative Pitts asked if we rent this unit and Secretary Reisch stated that this unit is leased, generally on a year by year basis until the permanent unit is opened. The temporary unit in Rapid City was originally created to remove the adult unit from the STAR Academy campus. Doyle Estes (owner of the current temporary Rapid City Minimum Unit) agreed to purchase this and provided us this unit on a temporary basis. Doyle also built the addition with free inmate labor. Doyle was made very well aware that our intent to remain in the property did not extend past the fall of 2010. The new addition was designed specifically for the needs of the DOC. Senator Albers asked if DOC was leasing on a monthly basis or yearly. Secretary Reisch stated typically we signed these leases for one year at a time, but because Estes had to pay for the materials to build the addition we DOC committed to remaining in the lease until the fall of 2010. Chairman Moore added precipitated that originally the Rapid City unit was to have been built with

VOITIS funds, but because of the delay in acquiring the land for the new facility the VOITIS funds were applied elsewhere to avoid losing those funds. Therefore, to build the new facility would require all state funds. A lease will be needed until funds are available to purchase the land to build the new facility. Now the state has to come up with the capital to purchase this land and to build the new facility. Legislative authority is approved to build, however funds are not available.

Agenda Item Number Four: Update on the delay of the new Rapid City Minimum Unit:
(See handout)

A handout was given of a summary of the update on plans for the delay of the Rapid City Minimum Unit. Secretary Reisch explained that two hundred and twenty-five thousand dollars (\$225,000) was granted to purchase land by the Flying J, but when flood plain issues were discovered, the sale was rescinded and the appropriation with interest was returned to the state. Pennington County was given the opportunity to work with the DOC in building a new county jail on the same piece of land. DOT did offer some land, however there were issues of methane being present. This offer was rejected. The site now being sought has been approved and is environmentally safe to build on. Savings were taken into consideration as well. Parole offices would possibly be relocated to this new facility, with the possibility of saving rent. Also parolees that need to sit a night in jail could be put into this unit and save on jail costs. There is a need of about three hundred (300) beds for this unit. There are currently three thousand four hundred (3400) inmates and a third (1/3) of them are from the Black Hills area. Commitment has been made to get this unit done. The last facility completed was in Springfield, constructed with colored steel panels. Secretary Reisch would like to see a more permanent looking facility using masonry or poured concrete sidewalls. Other options are going to be explored to come up with a plan to present before the 2010 legislative session. Senator Albers asked about the costs of the utilities and if the city is going to assist in costs. If the DOC brings in a facility with the water, sewer, electric this would raise the value of the land near the facility. The thirty (30) acres that are being sought would be utilized by the DOC. Chairman Moore made a comment that Secretary Reisch is right about the comments being made regarding citizens not wanting to be a neighbor to a DOC facility. Chairman Moore made the point that in Yankton, there has not been one problem with inmates going to and from their work release program. Public needs to be made aware and educated on what the work release inmates are doing. There is a Federal Prison Camp located in Yankton that has not been an issue at all. The county jail is located right in the center of the community. Chairman Moore feels that Rapid City needs to be educated on the DOC facility, what work release is all about and the fact that this unit will not be holding violent criminals. This is a minimum security facility for criminals with lesser offenses. Perhaps this would help ease the feelings citizens are having about the negative impact of the new facility being built. Education and communication is key to getting this information out to citizens to help with their fears of the facility and the inmates located at the facility. Chairman Moore asked for feedback from the Commission in regards to this. Chairman Moore is committed to working with Secretary Reisch in getting the information out to the Rapid City citizens in hopes of taking away their fears of this facility. Secretary Reisch feels that this fear should not be there if they build in the area they are currently looking at. Secretary Reisch reiterated that one-third (1/3) of the inmates are coming from the Black Hills area. These inmates need the support from family and friends of the community and surrounding areas.

Agenda Item Number Five: Mike Durfee State Prison X-Ray Procedures:
(See handout)

Secretary Reisch discussed the x-ray procedures and stated that Scott Bollinger is here as well to help with the discussion. Secretary Reisch gave a historical overview on the Springfield x-ray equipment. The issue is that the quality of the x-rays taken at the Springfield Clinic are low quality according to the

Department of Health's physician and at times x-rays are required to be retaken at additional expense to the state. Benefits to having the x-ray machine on site of the Mike Durfee State Prison would be that inmates would not have to leave the facility, reduced travel costs, faster turn around on x-rays being read, higher quality x-rays and uniformed officers will remain on campus at their posts.

Brad Drake asked if the additional sixty thousand dollars (\$60,000) is on top of the fifteen thousand dollars (\$15,000), which Scott confirmed it was additional. Brad then asked if we would need to hire an x-ray technician. Brad asked if the clinic in Springfield has been contacted to perhaps cost share in the purchase of the x-ray machine. This option was not considered, as Secretary Reisch would like to have an x-ray machine solely for the DOC. Secretary Reisch explained that the clinic is not always open in Springfield. Chairman Moore stated that the doctor is always on call, even though the clinic is not always open. Chairman Moore discussed that the city of Springfield has had a tremendous loss of services to the community since they lost the college. Chairman Moore stated that Springfield does provide fire safety, medical safety, etc. to the DOC at no cost. Chairman Moore feels that the DOH, DOC and the city of Springfield should collaborate together and seek ways to share costs of the x-ray equipment. This would be beneficial to the city, the DOC and the DOH. Chairman Moore feels that seeking the collaboration between these three (3) entities should be a priority at this point. Secretary Reisch is willing to go to the city of Springfield and meet with the mayor to discuss this issue, but added that he is skeptical about how a shared piece of equipment would be in the best interests of the DOC. Secretary Reisch explained that currently there are around thirteen hundred (1300) inmates at the Mike Durfee State Prison and with a possibility of an additional three hundred (300) to three-hundred and fifty (350) more in the future. With a maximum capacity of sixteen hundred (1600) to sixteen hundred and fifty (1650) inmates, Secretary Reisch strongly believes there is a need for the DOC to have their own x-ray machine on site, similar to the penitentiary in Sioux Falls. Secretary Reisch stated that the risk of community safety is an issue when the inmates are being transported to Tyndall to have x-rays done. Brad Drake recommends that they include the enhanced version of the x-ray machine (that allows images to be transmitted electronically).

Agenda Item Number Six: Apprenticeship Program Discussions:

Paul Aylward discussed the issue of parolees being given a chance for success with the work release program. Mark Anderson, President of the South Dakota Chapter of American Federation of Labor and Congress of Industrial Organizations (AFLCIO) was introduced by Paul. Companies like AGC and John Morrell have an apprenticeship program which applications are accepted twice a year. The IBEW (International Brotherhood of Electrical Workers) program is a five (5) year program. In LA County, there is a program that helps take care of disadvantaged citizens. IBEW helps get citizens into the education program, to assist them in obtaining employment that allows them to have higher paying jobs. The goal is to obtain the education while maintaining full time employment.

Senator Albers commented that he believes that a majority of inmates that return to prison is because there were no employment opportunities available to them. Senator Albers asked Secretary Reisch if there is someone within the penitentiary that helps the inmates find a job. Secretary Reisch responded by explaining that all transitions go through the parole agents. Inmates are to have a solid plan when they are released from prison. Inmates have thirty (30) days to find employment. If there is an employment issue, then the transitional case manager is utilized to help the inmate find employment. Secretary Reisch believes that it boils down more to the "quality" of employment vs. "quantity". The apprenticeship program would be beneficial to increase the quality of employment for inmates. The apprenticeship program would help prevent inmates from going back to previous employment, like housecleaning, etc. In addition, it would allow the inmate to improve themselves to be qualified for

higher paying jobs. Senator Albers asked if the education was provided, which Mark stated that the program is facilitated on its own with its own teachers. Senator Albers stated that this cannot be a bad thing for prisoners to have.

Mark Anderson asked Secretary Reisch if inmates apply for an apprenticeship license when they work under a journeyman in plumbing, electrical and etc., which Secretary Reisch stated that they do.

Chairman Moore would like to see this followed up on in more detail. Chairman Moore feels it is an important program to help with inmates seeking higher wage employment. Chairman Moore asked Secretary Reisch and Brady Kerkman that this topic be put on the next agenda for further follow up.

Agenda Item Number Seven: Review/Approval of SD Corrections Committee Annual Report:
(See attached report)

Brady Kerkman went through the Annual Report. Brady explained to the Commission that the report was compiled through the minutes from the three (3) meetings held in 2008, as well as requests made by the Commission to include headings, adult and juvenile trends and statistics on how South Dakota relates to its bordering states in relation to adult and juvenile corrections. Brady briefly touched base on the different topics presented in the report: Adult Trends, Juvenile Trends, 2008 Legislative Bills, Inmate Phone System, Redfield Minimum Unit, Permanent Rapid City Minimum Unit, Cultural Awareness, Offender Information System, Parole Services, Membership Changes, Statistics for Adult Inmates and Statistics for Juvenile Offenders. Chairman Moore thanked Brady Kerkman for putting together such an outstanding report that was compiled for the year. Chairman Moore has heard high remarks to this report from the legislature and from UJS system as well. Brad Drake commended Brady as well. Chairman Moore asked if there were any additional comments or revisions for the annual report, which there were none.

Agenda Item Number Eight: Review of Proposed Bills for Legislation:
(See attached handout)

Michael Winder stated there is a proposal in their packets to review to include three (3) bills brought forward by the DOC.

Proposal #1 - An Act to Clarify Certain Provisions Regarding Inmate Appeal of Prison Disciplinary Actions. Michael stated that the overall intent of this bill is to try to clean up the language to be interpreted. Senator Albers asked who deals with the infractions/appeals. Michael responded by explaining that appeals are handled within and if not resolved it would go to Secretary of Corrections. Paul Aylward asked the difference of infraction vs. revision. Chairman Moore looked up the statute and asked where in the statute this infraction is. Michael pointed it out to Chairman Moore. Chairman Moore feels that the word "or" or "of" can be interpreted either way. Secretary Reisch stated it could be the difference of the appeal process to lessen their offense. Representative Pitts asked if this has been written up for review and Michael stated that it has but has not been approved. Senator Bartling asked if this is a House or Senate bill. Michael said it is a Judiciary bill that could go to either House or Senate. This is proposed as a DOC agency bill.

Proposal #2 – An Act to Revise the Applicability of the Rules of Evidence to Proceedings Before the Board of Pardons and Paroles. The bill would make it clear that the parole board need not follow the rules of evidence in SDCL 19-9 to 19-18. Parole hearings are limited administrative law proceedings before a lay board. Some members may be attorneys, whereas others are not. Representative Pitts asked

if they anticipate having anyone against this proposal. Secretary Reisch stated they don't anticipate any objection. Senator Albers stated that he needs clarification of this Act. The Board of Pardons and Paroles hearing are not considered Administrative Hearings. Senator Albers was asking if anyone could come into these hearings and say whatever they wanted without having to prove it. Secretary Reisch stated it is addressing things like police reports being included in the hearings instead of actually having a police officer attend the hearing. Discussion held by Judge Brown that due process is the same as in probation cases. Some evidence may be allowed to enter in these hearings, but may not be allowed in court hearings. Chairman Moore said that after the first sentence it becomes clear that it says "limited" administrative law proceedings before a lay board. Judge Brown said that ACLU could oppose this, but doesn't look for this to happen.

Proposal #3 – An Act to Clarify Certain Provisions Regarding Escape from a Non-Secure Facility. Michael reported that current escape statutes do not address escape from a non-secure facility and different than those from a secure facility, such as the penitentiary at Sioux Falls. When the Criminal Code Revision Commission drafted revised escape statutes in 2005, escape from physical confinement became a first (1st) degree escape Class Four (4) and a failure to return following assignment (like work release or community service) or temporary leave (furlough) became second (2nd) degree escape Class Five (5). While a walk away directly from a DOC minimum unit should be considered a second (2nd) degree escape, current escape statutes don't address this scenario. Current statutes also fail to adequately address walk-aways from juvenile placement (such as West Farm).

Chairman Moore asked how it is currently handled with walk-aways. Michael explained that it is handled like an escape from a secure facility and that it would be up to the individual prosecutor on how this is handled, whether they would treat it as a Class Four (4) or Class Five (5). The goal of this proposal is the clarification of walking away from a job (work release) vs. walking away from the facility.

Chairman Moore asked Secretary Reisch if there were anymore bills being proposed at this time. Secretary Reisch stated that there was one more, however these three (3) were the only three (3) approved at this time and they held priority. Judge Brown asked if the fourth (4th) bill was in regards to Parole Eligibility, which Secretary Reisch confirmed that it was.

Chairman Moore thanked the committee for all the years he has been involved with the Corrections Commission. He provided an overview of all the changes that have occurred during his time on the Corrections Commission and the positive impact they have had within the corrections community. Chairman Moore feels confident that Secretary Reisch will accomplish the goals set forth by the DOC.

Secretary Reisch presented plaques to Senator Albers, Vice Chairman and Representative Moore, Chairman for their years of service to the Corrections Commission. Secretary Reisch thanked them both for the commitment and acknowledged that they both will be greatly missed. .

Agenda Item Number Nine: Adjourn:

Paul Aylward made a motion to adjourn.

Second made by Brad Drake. Adjournment approved by all.