

**Corrections Commission Meeting
State Penitentiary, Sioux Falls
Visit Room
November 17, 2011
11:00 a.m. -12:30 p.m.**

Approved Minutes

Members Present: Chairman-Senator Craig Tieszen, Judge Patricia Riepel, Senator Jim Bradford, Representative Larry Lucas, Mark Anderson, Mayor David McGirr

Others Present: Dennis Kaemingk – Secretary of Corrections, Laurie Feiler – Deputy Secretary, Aaron Miller – Policy & Compliance Manager, Michael Winder – Communications & Information Manager, Douglas Weber – Director of Prison Operations, Pat Pardy – Senior Staff Attorney, Russ Freeburg – Father of Employee, Lynette Johnson – Spouse of Ron Johnson, Cindy Schmidt – Victim Witness Specialist with AG Office, Mandy Nielsen, Corrections Specialist, Jake Iverson – KSFY TV, Anna Lempereur – KDLT TV, Brady Mallory – KELO TV, Pete Harriman – Argus Leader.

Members Absent: Judge John Brown, Representative Lance Carson, Brad Drake

Review/Approval of October Minutes:

Chairman/Senator Craig Tieszen called meeting to order at 10:57 a.m. Senator Tieszen made a motion to amend the Commission’s agenda to include a report regarding inmate Lashley’s death. Senator Jim Bradford seconded the motion. Motion was approved. Representative Larry Lucas identified a correction to the October 25th minutes. The draft states Senator Bradford noted four (4) more correctional officers were hired; this should be Senator Craig Tieszen rather than Senator Bradford. Senator Tieszen asked for any other changes. Hearing none, he asked if there is a motion to approve the minutes as amended. David McGirr made a motion to approve the minutes, Representative Lucas seconded the motion. The motion carried.

Updates on NIC Recommendation and Summary of Training and Commission Discussion:

Material presented by Deputy Secretary Laurie Feiler and Warden Douglas Weber. Deputy Feiler stated she would brief the Commission from the National Institute of Corrections (NIC) recommendations report, which was provided to the Commission in October. The first recommendation made by NIC was to incorporate a facility accountability plan. A memo on this went out in July and a revised version went out in September. A due date of December 1st has been set to merge the plan into the operational memorandums (OM) and DOC policy. The second NIC recommendation that was not complete at the time of the initial review was to review the DOC classification policy. The classification policy has since been reviewed and changes have been proposed. Also being reviewed as part of the classification process is how DOC scores escape and absconding levels, along with how often these are reviewed. The third recommendation by NIC was to evaluate inmate jobs. A due date for this review has been set for December 1st. Department of Corrections (DOC) staff have finalized the job assessment and are now working on a pilot run to review these jobs. DOC also looked at how often classification

is reviewed and how it views rule violations, the affect these have on classification and causes for an inmate to be placed on maximum custody. Deputy Feiler clarified these are proposed adjustments to the policy and must be reviewed by Secretary Kaemingk.

Senator Tieszen asked in reference to the second recommendation, if it was fair to say there are triggers that would cause more frequent reassessment of an inmate's classification? Deputy Feiler responded yes. She stated that if an inmate's classification never changes, we are evaluating if it makes sense to continue to conduct reviews on that inmate each year. The classification changes to the policy has been reviewed by Deputy Feiler but not signed by SOC Kaemingk. The group has finalized the job assessment and prepared a draft of their suggested changes. The group is working on a pilot and to establish base validity. Secretary Feiler stated the group evaluated inmate jobs based on inmate risk. The due date to start the pilot is Dec. 1, 2011. The Commission received some of the information regarding job assessment previously. Deputy Feiler shared staff has compiled a list of all inmate jobs in Penitentiary and will continue to review these.

Warden Doug Weber discussed the staffing analysis with trained staff provided through NIC. DOC staff completed the initial staffing analysis at SDSP November 11th and has not noted any concerns on the staffing analysis. He shared the DOC has not completed this review at the other DOC facilities. Meg Savage, the current expert on staffing analysis with NIC, is willing to come back and do additional training with DOC staff. This training will provide staff the opportunity to be able to conduct staffing analysis at other SD DOC facilities. The training will involve forty (40)-hours of staff training. DOC has opted to do this training and is in process of preparing a request for technical assistance with NIC. Warden Weber stated he is hopeful by the start of next year the DOC will be able to bring Meg back to train 20-24 DOC staff on how to conduct staffing analysis. Warden Weber shared that a staffing analysis is a very complex process; it involves considering different levels of staffing at each of the hundreds of posts at the facility and the different staffing requirements of each post. It also looks at variations of post duties associated with the time of day and looks at what inmates are doing, as well as what is going on in the institution at certain times. The internal staffing analysis review was completed by Major VanVooren, who has been trained by NIC and has done staffing analysis for DOC for over a decade. Her report has been submitted to Warden Weber and Secretary Kaemingk. Warden Weber stated the message he would like to send to Commission and to the public is that a review has been done. The review indicated there are no serious issues in staffing at SDSP; however, we are allowing NIC to come in and train couple dozen DOC staff in staffing analysis and will then conduct this review at all DOC facilities. This will be beneficial to the DOC.

Senator Tieszen inquired about the cost for staff analysis training and what the timeline for receiving a response. Warden Weber responded that response depends on the need and the funding is available through the Federal Bureau of Justice. NIC has access to staff experts that can assist the SD DOC. The process is that the DOC will make a written request through Secretary Kaemingk. The training is fully funded by the federal government. There is no cost to the state. Warden Weber stated he would not say it is easy to obtain but NIC has been very responsive to SD in the past when we requested assistance and funding. Senator Tieszen asked about the timeline to hear back from the NIC. Warden Weber indicated the timeline varies; sometimes a response is just a matter of weeks, other times it may take months. The response varies on the Federal budget and what Congress might do in the budget cycle. Warden Weber

shared that the NIC has been very responsive in the past and is usually quick to respond but we are having problem getting a commitment on the last request we submitted.

Representative Larry Lucas asked about once the DOC staff becomes trained by an NIC trainer whether they would be asked to audit/review neighboring state's staff and conduct an analysis for other facilities. He also inquired whether SD DOC staff would be part of the pool of experts. Warden Weber stated that would likely be the case. Typically, NIC sets up a host state. SD has acted as a host training site to NIC in the past. SD sees this as an opportunity. Representative Lucas asked if staff were used, would there be an adjustment in pay or classification for the individuals trained. Warden Weber responded that this would not be unusual and we are willing to accommodate any needs or requests NIC may have. Warden Weber responded that there would not be an adjustment in pay or classification for those staff who were trained but the training would look good on their resume make them a more valuable corrections employees.

Senator Jim Bradford inquired whether Warden Weber is finding the additional security staff that was recently hired at the Penitentiary helpful. He asked if Warden Weber feels their staffing needs are adequately covered now. Warden Weber answered that it is good to see additional staff in areas where lot of inmate movement takes place and staff are able to get more work done and better cover the area.

Judge Patricia Riepel asked whether the NIC training is offered through a grant. Warden Weber responded the DOC makes the request through NIC and they in turn forward the request to the Federal Bureau of Justice. The training is fully funded by the federal government so SD will not have to fund the training.

David McGirr asked if Warden Weber would explain how the NIC review completed in November differed from other internal reviews. Warden Weber responded that the review was of twelve (12) changes that were recommended; and that the two NIC experts who completed the review were highly experienced and trained. Their review was very in-depth and consisted of a detailed examination of our operation. They focused on helping the DOC make changes to prevent this type of incident from happening again. These reviews use technical assistance from people who have done this at many prisons. The experts had several recommendations and the DOC is adopting those recommendations and changing how we conduct business.

David McGirr also inquired if the review completed in November showed the need for additional staffing, even if the incident had not occurred? Warden Weber responded the NIC review stopped short of saying that more staff were needed in a particular area or providing a recommendation for a set number of additional staff. Warden Weber shared that the review did not show any "smoking gun". The nature of corrections is that often, more staff is needed than are available. Staff works hard to keep things running smoothly and make sure no posts are left unattended. Adding the additional positions cannot hurt and will help with this coverage. Warden Weber stated the NIC will come back in for staffing analysis training later and this will put the DOC in a better spot for having more trained staff in staffing analysis.

Warden Weber advised the Commission that issuing and training staff on the use of specific security equipment was done in September and additional training and implementation will follow. Oleoresin Capsicum (OC) was recommended to be carried by all staff; in September or October the decision was made for OC to be carried by supervisors for a period of time and then

the DOC would review issuing this to certain staff inside the security perimeter. The DOC will move in that direction. Currently a supervisor always has OC issued and is on the floor and able to respond quickly, should the need arise. Warden Weber briefed the Commission that OC has been deployed twice due to inmates fighting. The OC has worked as hoped and has done what it is designed to do. Judge Patricia Riepel commented that it makes sense for front line staff to be carrying OC rather than just supervisors

Warden Weber responded by stating that the training involved in the staff carrying OC is very in-depth; staff must be aware of the risks of applying OC, along with being familiar with the Use of Force Policy and accountability. Corporals and above currently are issued OC. Warden Weber feels this needs to be implemented in steps and that it best to start with the supervisors, corporals and above. Senator Tieszen pointed out that any weapon given to staff can, and at some point, will be used on staff. He agreed with the cautious procedures of the DOC. Senator Tieszen stated it is important to note both sides of view. Inmates are aware of pepper spray now being issued to staff and will likely learn to comply in order to avoid being sprayed. Eventually, compliance will improve and staff will have to deploy OC less and less. Warden

Weber touched on the safety modules to be included in pre-service and in-service class. This will be presented starting in November^h during the next pre-service class. The focus on staff safety discusses how to deal with unruly inmates and con-games. NIC recommended that DOC schedule a full day of staff safety training. Trainers have been teaching this but the change will involve more focus on staff safety. This is a more intense and very well written training module. All staff will review this starting in January when annual in-service starts. This type of staff safety briefing/training is based on Washington State's response to an incident they dealt with involving the assault and death of a corrections employee.

Warden Weber also stated that in order to keep emphasis on staff safety, small safety books have been given to all uniform staff. They are expected to carry these with them at all times. A few minutes is spent at the start of each briefing on staff safety with something from the staff safety books being mentioned each time to be a constant reminder of safety. Constantly bringing safety to staff's attention is important. In addition, this helps to improve communication.

Warden Weber stated that one thing they do is a daily briefing paper that is available to all staff. They can read about significant events and things they need to know about. Staff is working on developing a power point presentation that will be constantly shown on a TV screen where briefings are held. This will serve as a teaching and education tool and provide better information in a timely manner.

Lastly Warden Weber discussed the additional metal detectors. SDSP added a few of these machines and purchased additional handheld detectors that have been deployed throughout the prison. Some have also been added to Mike Durfee State Prison (MDSP). NIC recommended daily testing of all metal detectors. Previously these were tested but not on a daily basis. Now, everyday each machine is tested with piece of metal at different levels. Warden Weber stated we have discovered a couple of issues with metal detectors and resolved these.

Senator Tieszen asked whether there were any questions or comments from the Commission on the reports received the last couple of meetings with the internal changes and NIC recommendations and the steps taken by the DOC to meet these recommendations. Hearing none, Senator Tieszen asked for any questions from the Commission about what has been done or will be done in the future and any comments on this matter as the Commission is at the point of winding down on this review. He opened the discussion to comments or questions.

Mark Anderson commented that coming from the construction industry; he feels the discussion of employee safety being part of daily briefings is a step forward.

Senator Tieszen asked if the DOC has a specific Safety Officer. Warden Weber responded that we have a Risk Manager who is also a lawyer. The Risk Manager reviews any problems or incidents around the prison. DOC staff also conducts weekly and quarterly inspections. The Risk Manager investigates any issues and reports their findings to office of Risk Management. Warden Weber shared that the DOC has some rather heavy industry here (SDSP) and at MDSP it feels important to emphasize safety and to conduct inspections to avoid serious problems or injuries. Senator Tieszen concurred that Risk Managers are very necessary people.

Senator Bradford commented that at the last meeting, Dusty Johnson the Governor's Chief of Staff, came in and discussed the possibility of additional compensation for certain staff. He asked whether anything more has been determined with this. Secretary Kaemingk stated the he looked at the reclassification of Correctional Officers from N11 to N12 and for Sergeants to change from a N13 to N14. That is the plan at this point but the Governor will outline a more detailed plan and any possible salary compensation at the upcoming budget address. Senator Bradford shared that while he was attending a Board of Regents meeting; he put in a "boost" for the corrections employee's salaries and shared he supports the DOC in their request. He is stated he felt it was important to put in a "pitch" for salary increases right here with DOC. Senator Bradford stated the recent incident helps makes this need clear.

Secretary Kaemingk stated t he asked the Bureau of Personnel (BOP) to look at turnover. The BOP found turnover is the greatest within the first year or two of employment. Secretary Kaemingk believes the salary policy that has been proposed will address that concern. The average years of service are 8.4 years at SDSP and 9.1 at MDSP; which is reported to be up from previous years. High turnover concerns us but average years of service are pretty good at DOC. Warden Weber stated we are hearing positive things from staff since the salary proposal was released. If we can get them past the first two years, turnover drops dramatically. Warden Weber stated we are doing other things to try to help with this.

David McGirr commented that after having the opportunity the previous day to walk through the facility and interact with some of the staff, he asked some of the staff what they thought of their job and what their concerns were. Staff he spoke to had been at DOC for 6 weeks to 20 years. He commented that the biggest concerns were not about safety but about the continuous operation of the facility, which required staff to work various hours, often taking away from time spent with their family. Mr. McGirr stated this seemed to be a leading cause to turnover. He stated he did not hear a single officer express that the administration was not looking out for their safety. He felt that is a good sign. Mr. McGirr stated that in Huron, they have the same concerns with firefighters and police officers. These jobs are very hard on families. There is no easy answer as there are always jobs and shifts that must be covered. Mr. McGirr shared he

does not think turnover in DOC is due to safety concerns of staff. Warden Weber commented that he was glad David had the opportunity to take a tour and interact with staff and the responses shared with David did not surprise him. Warden Weber shared the NIC received the same results during their review and numerous interviews with staff. They too pointed out the facility was well run and that they found staff looks out for one another. Warden Weber stated we typically hear the new staff turnover is due to working hours, holidays and the pay.

David McGirr commented that another observation he made was that there has been a lot of focus on officer safety to date and many changes made. The incident shined new light on some issues and areas to improve upon but he believes staff safety has always been a priority of DOC. He wanted it to be known that he believes DOC always has cared about safety and this incident has only brought additional focus on the issue. Warden Weber responded by saying we are way ahead of where we were when he started his career in corrections. This is a constantly evolving field and there are daily adjustments, not just since the incident in April. Mr. McGirr explained that the police force has evolved over the years in a similar fashion and has increased training for officers. Senator Tieszen asked if there were any more questions or comments.

Mark Anderson commented that he would like to go back to pay issue and wondered if longevity is a blessing or curse and if turnover is because they feel that the staff cannot advance. He shared that in the construction industry, when you start; you get a raise every 6-months. You have a map and know where you are headed. Secretary Kaemingk stated staff does have a chance for advancement and this is already built in. He added that while the starting salary is \$12.71, he is hopeful this will increase. Staff also receives a percentage bump after six (6) months, one year and then again in two years.

Representative Lucas commented on the need to work on communication to the public. He suggests that when it comes down to it whether corrections would get the money for salary increases or education, it would likely go to education. He stated DOC needs to show all of the positive things it does to help support why corrections should get more money. He asked if we do a media blitz or put this information on the website. Secretary Kaemingk commented that we try very hard to get good information out there and put it out there but it depends on media whether this information is printed.

Senator Bradford discussed pay raise increments and questioned why it has been so long since the raise increment has changed. He shared he sees the same problem in the teaching field. The bottom line salary does not change very often. The minimum salary needs to go up. Senator Tieszen questioned if the base rate changes when state policy changes. Warden Weber confirmed that was correct. If there is a 3 percent raise, the base salary will raise at the bottom as well. Secretary Kaemingk stated he believed in 2000 or 2001 the \$1.50 raise was added to the base pay. With the additional bump, new staff will be making a complete salary even for Sioux Falls.

Judge Riepel stated that while she is very supportive of pay advancements and feels that they are well deserved, she feels exit polling will show the hours and the commitment to the job are causing the turnover factors. She wonders if applicants do not truly understand the level of commitment and involvement required when they apply. She stated these are tough jobs and she applauds the efforts to keep people but the numbers the job itself has an impact on turnover, in addition to pay issues. She stated that working in government is different than

working in the private sector. DOC should look at what people expect when they enter DOC. It is a challenging field, being with criminals and working in a prison is different than most jobs that are out there.

Senator Tieszen agreed with Judge Riepel's comments and added that it is still very different to most other jobs, even other jobs in criminal justice. Working in a prison has its own challenges.

Senator Bradford stated that in the teaching profession there is a requirement that if you have a felony you are fired, no questions asked. He inquired whether there are any misdemeanors or felony charges that would prevent a person from working in corrections. Warden stated it is difficult to work in prison with a felony. A misdemeanor is looked at on a case by case basis. We are selective and careful when hiring staff. We look for past behavior or contact with law enforcement. Senator Bradford also inquired whether the warden had the power to make that decision or if it was in statute. Warden Weber responded he has the power to make that decision.

Senator Tieszen ended the discussion and requested a periodic review or report as these are available to keep the Commission informed on how things progress. Warden Weber passed out the Safety books to the Commission. He also expressed his appreciation for the Commission over the last few months. He commented that when he started, it was a lot quieter working there and now it is a much more active commitment. Warden Weber shared the appreciation the Commission getting their feet wet so quickly and for taking an active role in what has occurred this past year. The Commission has had to "step up" and get their "feet wet" with new issues and incidents never experienced by a Commission before. He also thanked the Parole Board and staff for all the cooperation given the past couple of days and for those Commissioners who attended the training and for becoming better informed.

Inmate Lashley Death – Public Input:

Senator Tieszen reminded everyone prior to the discussion on the Lashley incident that this is an ongoing investigation and it involves a death. There will be a number of reports that will be part of the final report and the information being presented is not complete. Presently, there is a pending prosecution and an individual has been charged with a crime. Senator Tieszen stated that this matter should not be tried in front of the public. The Commission will receive a report to the degree that can be shared.

Secretary Kaemingk read the Division of Criminal Investigations (DCI) report describing the events that took place on Tuesday, November 15, 2011 between MDSP inmates Dennis Lashley and Kendall Osteen around 7:30 a.m. Mike Durfee State Prison is a low-medium prison located in Springfield, SD. MDSP houses roughly 1230 inmates. DCI is conducting an on-going investigation, including interviewing Kendall Osteen along with other witnesses. Secretary Kaemingk discussed the charges that were filed on inmate Kendall Osteen and why those particular charges were filed. An initial review has been conducted and found DOC staff acted appropriately. DCI's investigation is ongoing. Secretary Kaemingk reported he is proud of Warden Dooley and his staff and how this incident was handled. He stated that all appropriate procedures were followed; the altercation was very short in duration and staff acted appropriately, the scene was secured for DCI and all potential witnesses were separated for interviewing.

Representative Larry Lucas inquired about how significant of a factor alcohol was in these individuals lives; were they alcoholics and did they have access to any alcohol in the facility? Secretary Kaemingk stated he did not know their condition and he would have to talk to the CD counselor but that it is true they were both incarcerated for felony DUI's. He indicated he does not believe, nor is there any evidence of alcohol being a factor in the incident.

Senator Tieszen asked about fighting incidents (not a death) between inmates. Secretary Kaemingk responded these are more common in higher custody levels, such as at SDSP and the Jameson annex. Statistics show there were no inmate on staff assaults in 2011 at MDSP and no inmate on staff assaults in 2010, with the exception of 2 sliming incidents. No inmate on staff assaults in 2009 and 1 inmate on staff assault in 2008 at MDSP. Over that period of time there were around 1100-1200 inmates. He told the Commission that MDSP is low medium custody facility. In 2010 there were 7 inmate on inmate assaults with serious injury at SDSP, 24 without serious injury, fighting without serious injury, 56 inmate fights (defined as not having serious injury), inmate on inmate assaults with no injury. In 2011 there were 3 inmate on inmate assaults with serious injury, 28 without serious injury, and 41 fights without serious injury.

Senator Jim Bradford inquired whether the security video tapes are reviewed and looked at daily. Warden Weber responded that there were hundreds of cameras set up between the Sioux Falls facilities and Mike Durfee State Prison and these tapes are not specifically reviewed on a daily basis but they are spot checked, in addition staff listens to random phone calls. Also he noted that all video footage is recorded which makes it accessible if needed. Staff can go back if we get information we need to verify, we can review the tape.

Senator Craig Tieszen clarified some areas and cameras are directly monitored constantly by staff. Warden Weber confirmed this. Some cameras are monitored when inmates are out and about.

Senator Bradford asked about Lashly's age. Secretary Kaemingk responded inmate Lashley was 62 and inmate Osteen is 49 years old. Senator Bradford asked about whether DOC knows this inmate's medical history and if they are aware of any medical problems inmates may have had upon coming into the facility. Warden Weber responded staff does a PREA sort to avoid putting perpetrators in with victims and they also do an AIMS sort to keep aggressive inmates away from victims. Warden Weber stated the DOC does consider medical conditions when doing classification and that the particular unit where these two inmates were housed is a housing unit for inmates that are somewhat incapacitated in one way or another. This unit is composed of like inmates who may have issues getting around but it is not a geriatric unit. There were no red flags with these two inmates living together. Secretary Kaemingk stated the population the DOC is dealing with do not work or play well together and considering the low number of incidents we have he believes this can be credits to the efforts of Warden Weber, Warden Dooley and their staff. This was an unfortunate situation, but what we are hearing, even though the investigation is not complete is that we are doing well and this was handled appropriately.

Senator Tieszen asked whether an after- incident report can be expected at the next meeting. Secretary Dennis Kaemingk responded that he will certainly look into that.

Sen. Tieszen asked for any public input. Hearing none, he moved to the next agenda item.

Location for Next Meeting:

The next meeting is scheduled for December 5th in Pierre at the State Capitol Building in the basement. The time is set for 3:00 pm and the meeting will adjourn by 4:30 pm. Senator Tieszen stated this meeting is to hear proposed legislation that legislators have. A letter is being sent out next week advising legislators of the opportunity to share corrections related legislation with the Commission. At this time there are no pending agenda items.

Representative Lucas inquired whether the Commission will bring forth any legislation about getting reports/information on inmates brought to the DOC prior to the inmate arriving. Also whether the Commission will have an opportunity to review and approve the yearly report prior to it being sent to the Legislature and Governor? Secretary Kaemingk asked for further clarification regarding the information question. Representative Lucas responded that if the DOC receives an inmate from another state, do we have the information on the inmate before we take them into custody. Deputy Feiler stated that there are a couple things wrapped up with inmates doing time out-of-state. The most common is inmates involved in an interstate compact. The information currently received is good because the transfer will not be made if the information is not given. The state can say "yes" or "no". The inmate McVay situation was different because he had time in Nebraska and South Dakota and his time in Nebraska was done. SD did not have a choice because he had time to serve in SD. We did not have information on his compliance. That is the piece we are looking at now. Secretary Feiler responded this is working its way through the agency process. Representative Lucas asked if this would be a department bill and Deputy Feiler stated at this time she assumed that would be the case.

Senator Tieszen clarified the Interstate Compact Program is an exchange of prisoners between states. Unless we are satisfied, we don't have to accept the prisoner. SD cannot pass a law telling another state what to do. Warden Weber stated we have agreements with other states. We consider requests for high profile inmates that must do time somewhere else other than the state where they were sentenced. Warden Weber also commented that Rick Leslie will review all the necessary information and makes a recommendation before it is forwarded to the Warden for final consideration. He stated that DOC does not bring problematic inmates into the system unnecessarily. We decide and make the decision whether to accept these inmates. We accept prisoners under those conditions and also "farm" them out to other states.

Judge Riepel asked whether the December 5th meeting will be made telephonically available. Policy and Compliance Manager, Aaron Miller responded that this will be an option.

Senator Bradford stated he has never seen or toured the Mike Durfee State Prison in Springfield and he would like that opportunity. Senator Tieszen commented that any Commission member should feel free to contact the Secretary of Corrections to arrange a tour of any facility. He also commented that the Commission rotates the location of the meetings between each facility and the Commission met at MDSP just prior to Senator Bradford joining the Commission. Warden Weber informed Senator Bradford he would arrange for him to have a tour of MDSP at his convenience and he can call him to set this up.

Adjourn:

Senator Tieszen moved adjournment, Judge Riepel seconded, and the meeting was adjourned at 12:33 p.m.