

South Dakota Corrections Commission
Mike Durfee State Prison
August 27, 2012
Final Approved Minutes

Chairman Craig Tieszen called the meeting of the Corrections Commission to order at 2:30 p.m. on August 28, 2012, at Gill Hall, Mike Durfee State Prison, Springfield, South Dakota.

Members present were: Senator Craig Tieszen, Chair; Senator Jim Bradford; Judge Robin Houwman; Judge John Brown; Representative Larry Lucas, Vice-Chair; Representative Lance Carson, and Mr. Mark W. Anderson. Commissioner Tim Bottum was present by telephone. Commissioner Dave McGirr was absent. The Department of Corrections was represented by Denny Kaemingk, Cabinet Secretary; Laurie Feiler, Deputy Secretary; Bob Dooley, Warden; Michael Winder, Communications and Information Manager; and Aaron Miller, Policy and Compliance Manager. Also present were Representative Frank Kloucek and Mr. Randy Dockendorf of the Yankton Press and Dakotan. Jim Seward, General Counsel to the Governor, joined telephonically.

Secretary Kaemingk noted that SCO Mark Pischel, a 14-year veteran of Mike Durfee State Prison, had just passed away as the result of a motorcycle accident. He extended his condolences to Mark's wife, Kim, and their children, Dustin and Jacey, as well as the Mike Durfee State Prison staff. A moment of silence was observed. Chairman Tieszen also extended the Corrections Commission's condolences to the Pischel family and to the MDSP family.

Chairman Tieszen thanked the MDSP staff for the lunch they served and the tours they provided to commission members. Many of the commission members had never toured MDSP and the rest had not done so recently. He commended the Warden and the staff for the appearance of the grounds, how well-kept the trade areas are, and noted that people were working wherever they went.

Warden Dooley thanked the commission for traveling to Springfield and the opportunity to show the members the campus/facility and explain some of the programs.

Representative Carson asked what the staffing level was on a shift. Warden Dooley stated that about 27 COs were on duty as well as the shop supervisors, teaching staff, nursing staff, and cooks. Approximately 60 people are on duty during the day; on the night shift, that goes down to 14 or 15 people. The total FTE count is 188.

Judge Brown asked how many inmates are in a trade. Warden Dooley responded that 65% of the inmates either work or go to school.

Senator Bradford noted that he was at Springfield in 1948 when his brother was in college. Now he has seen MDSP first-hand and can speak from personal experience. He commended MDSP for its operation and feels that its mission is a big step in the right direction for the inmates. The trades they learn give the inmates the best chance at rehabilitation and becoming viable members of their communities.

Representative Kloucek welcomed the commission to Bon Homme County and recommended the beautiful museum downtown and various local establishments. He noted the community is very proud of the work done at MDSP.

Chairman Tieszen asked for a review of the draft minutes from the May 22, 2012, meeting. Senator Bradford moved to approve the minutes as submitted. Judge Brown seconded the motion. The motion carried.

Chairman Tieszen began the discussion of the Criminal Justice Initiative Workgroup, appointed by Governor Dugaard to review criminal justice issues, particularly South Dakota's prison population. The impetus for the workgroup is that South Dakota is about five years from needing a new women's prison and ten years from expanding the Penitentiary. The Governor has put together a workgroup to look for opportunities to be smarter on crime, rather than tougher on crime. The group has met twice and the third meeting is scheduled for Thursday, August 30. Three members of the group are elected representatives as well as other members who staff the group in one capacity or another. The initial meeting was kicked off by the Governor, Chief Justice, and legislative leadership at a press conference, an indication that all three branches of government have agreed to work collectively on this process. The Governor made it clear that he has no intended results; he wants the workgroup to study the issue and make recommendations. The Pew Center is conducting research on statistics in South Dakota, gathering information both from UJS and DOC, compiling information revealing who is in prison for what. Chairman Tieszen has been impressed with the Pew Center's work of analyzing the research and presenting it. They have presented their numbers, charts, and graphs and have been questioned extensively by those well-informed about the South Dakota criminal justice system, and they have answered all questions. These folks are mostly from out of state, and they are still familiar with the nuances of how things are done in South Dakota. They have done similar work in a dozen other states. Pew will present more data at Thursday's meeting. Following that presentation, future sessions will focus on policy discussions about proposed changes. The group has been talking about what drives the population; the charts show how our population differs from other states' numbers. South Dakota has very high numbers of DUIs and drug offenses incarcerated. The Chairman offered to allow those in attendance to review his workbook. The workgroup's conclusions and recommendations will be made in time for action at the legislative session in January.

Representative Lucas was honored to be chosen by the Speaker of the House to be a part of the workgroup and believes the Governor is fully committed to this effort. Some changes will come through policy; others may be in the form of proposed legislation. One of the statistics the Governor quoted is that in 1980, South Dakota was spending \$19 million inflation-adjusted dollars on the corrections population. That figure is about \$102 million today. Representative Lucas stated he tends to focus and support the preventive, educational aspects of the initiative. There is also an advisory group, comprised of the Chief Justice, former Chief Justices, and former legislators who rein in the workgroup from time to time and focus the workgroup on its mission and goals. The number one priority is to keep the public safe and better utilize state dollars to deter non-violent offenders from escalating to worse crimes. Representative Lucas noted that the commission saw several examples on the tour of MDSP where people can be rehabilitated in a short amount of time. He was surprised to learn the average stay at

MDSP is 9 months in comparison to the statewide average of approximately 18 months. Although DOC provides treatment and job skills, the recidivism rate is 40 percent within three years. He is also very impressed with the Pew Center research. Not only has Pew done background work before arriving, they are touring our facilities first-hand and looking at the data.

Senator Bradford noted his primary concern is for the Native American population. He is disappointed that Native Americans are being incarcerated at a higher rate and are recidivating at the same high rate, which partly stems from reservation life, which is so different. Native Americans are moving from rural areas to Rapid City and Sioux Falls, a totally different atmosphere. For instance, it is illegal to drink beer on some of the reservations, yet liquor is one of the biggest problems on the reservations. Another question is why the women are suddenly becoming incarcerated at a higher rate than the men. Maybe this study will answer those questions. Senator Bradford appreciates being able to serve on the criminal justice initiative committee. He stated he was very interested in the subcommittee on Native American issues.

Chairman Tieszen noted that as part of the process, all 15 members of the workgroup were interviewed by telephone for about an hour. From that, Pew compiled commonalities from their interviews. One commonality everyone talked about was the high incidence of Native American incarceration and jurisdictional issues on reservation lands. These are challenges which someone from Washington, DC, might not be familiar with. Pew has identified some of these issues and challenges as things that need further evaluation and consideration.

Denny Kaemingk noted for the past eight to ten years, DOC has been working very hard to plan for an inmate's release, starting the day they arrive. From the initial assessment, to the LSI-R, to knowing individual needs and plugging in needed programming, to mental and medical health, DOC is working to prepare inmates to return to the community and become successful. DOC has adopted many evidence-based practices which have been proven to lower recidivism. DOC has set goals for reducing recidivism and we have reached some of those goals. Secretary Kaemingk hopes Pew will provide insight and direction which will help DOC to continue lowering our recidivism numbers.

Chairman Tieszen noted DOC should not view this study as a threat or an indictment of the department or its employees. The workgroup appreciates the way DOC has stepped up and wanted to be a part of the process and contribute to the solution. South Dakota is the 13th or 14th state to have gone through this process, and there have been very good success rates in other states. One of the success stories is the State of Texas. Texas's reputation is as a tough-on-crime state with a huge corrections population. Texas went through this process and made significant changes in the way they do business. There are good bi-partisan results in other states where legislation has passed unanimously or nearly unanimously with bi-partisan support.

Judge Brown noted the judges have been involved in the process from the beginning. They have had several meetings with the workgroup. The Governor's office has done an artful job of listening to everyone to get input, and he is pleased that the Pew group has been involved with South Dakota's efforts to address this very important issue and he is looking forward to the suggestions that result. The

Unified Judicial System is challenged with finding ways to deal with offenders who have drug and alcohol issues and don't necessarily need to occupy space in our prisons. He has a DUI program in his circuit that is showing signs of success, and it takes a commitment on the individual's part and a lot of the court's and court services' time.

Representative Lucas noted the Legislature has a lot of pressure to get DUI people off the roads, because they are killing people. In rural South Dakota, if they work, they have to drive to work. Offenders can look you in the eye one day and say they are committed to the program and the next day they may be high or going to the bar and drinking alcohol again. In Sioux Falls, they can take mass transit to get to work, but that doesn't work in rural South Dakota. We may have to look at things like transitioning those individuals to areas where they have access to mass transit because we are under a lot of pressure to get drunk drivers off the road. As the Governor said, this isn't a get-out-of-jail-free card, by any means.

Chairman Tieszen noted that the next Criminal Justice Initiative Workgroup meeting is Thursday in Pierre at the Red Rossa from 10:00 – 2:00. This meeting is open to the public. He offered his workbook for review by those present. He shared he has been talking to legislators when he can, as he believes at least part of the solution will require legislation.

Secretary Kaemingk briefed the Commission on the work release policy, as a result of a request at the last meeting. Henry Anfinson left Unit C in Sioux Falls a couple weeks prior to that meeting, and Secretary Kaemingk gave an update at that meeting. The Commission asked to be briefed on any policy changes that resulted from the review following that incident. Anfinson was in Unit C in Sioux Falls and had gone to the Minimum Unit in February. He was serving time for Grand Theft, Forgery and Failure to Appear. After an inmate is in Unit C for 30 days, he is eligible to go out to find work. He was having difficulty finding work and was given an extension. On May 7, from 1:00 – 4:00 p.m., he had permission to be gone on a job search. He went to two businesses on East 10th, and returned to the unit at 3:50. He was arrested shortly after that for First Degree Burglary and Rape. He is expected to have a jury trial in the next few weeks.

DOC reviewed the work release policy. To be eligible for work release, an offender must be minimum status and cannot be a sex offender or have been convicted of a violent crime. He cannot have warrants or pending cases. He has to be in the minimum unit 30 days before getting off-campus privileges to look for work. He must be within 12 months of parole eligibility or flat date in order to be eligible for work release. DOC added a new section:

“ L. Inmates who are past their initial parole date due to non-compliance or a suspended sentence or parole violation are eligible for work release provided they are within twelve (12) months of their next discretionary parole date and the following do not apply: “

Mr. Kaemingk noted that if an offender received Category 5 write-ups, which are the most serious, the offender will be ineligible for work release. Excessive discipline points will make offenders ineligible. If an inmate had refused programming, he would be excluded from work release. Policy changes were made which would have made Anfinson ineligible. If the Parole Board revokes an inmate's parole or

suspended sentence for violation of Condition 1 (weapons and assaultive behavior), the inmate is not eligible for work release. Mr. Anfinson did not have any convictions for assaultive behavior, but he had some assaultive behavior while he was on parole that did not result in any additional criminal convictions. This was on the current admission (sentence) he was serving at the time, which under the revised policy would have made him ineligible for work release. He would have remained eligible for community service.

Representative Lucas asked what the average length of time is between when an inmate walks away and when he is caught. Secretary Kaemingk noted that the longer they remain at large, the more difficult it becomes to locate them. Typically they are caught in the first day or two. Some go back to the reservation where we have no authority. Secretary Kaemingk stated that they will be located and returned sooner or later, but the times vary.

Representative Lucas asked about putting GPS tracking devices on work release inmates. Secretary Kaemingk stated that was an interesting concept. DOC has GPS bracelets and SCRAM bracelets, but when the offenders abscond, they cut them off.

Representative Carson asked for explanation of the differences between work release and community service.

Secretary Kaemingk said that a work release individual can work at any for-profit company for wages, from which the inmate pays restitution and incarceration costs. A community service worker receives \$.25 cents per hour. Typically this involves working for non-profits or local governments. DOC receives \$1.25. Employers pick them up at the unit and take them to work. The supervisors receive training and undergo background checks. Many times they must return to the facility for programming during the day.

Senator Bradford asked for an update on the Rapid City facility. Secretary Kaemingk stated the current the population of the unit was 204. Work release individuals have been very successful. A number of years ago, community service cost more in West River, because when the temporary unit was opened, the Legislature said it had to be self-sustaining. The new permanent unit is included within the general budget. The cost per hour to the nonprofits was \$3.15 West River and \$1 East River. DOC will bill \$1.25 per hour per inmate in January. The rate will be consistent throughout the state. Hopefully this will encourage more community service jobs west river.

Chairman Tieszen asked Secretary Kaemingk for input on future meetings. Secretary Kaemingk noted that the Commission has not been to STAR Academy for a long time. The Commission could look at the boys and girls campuses, about 15 miles apart. Chairman Tieszen asked where the Commission is in complying with statutory requirements to meet twice a year. Aaron Miller noted that the Commission has averaged three meetings per year with the last meeting normally being held in conjunction with the Governor's Budget Address. The purpose of the December meeting is to provide legislators with an opportunity to discuss upcoming Corrections-related legislation with the Commission. Secretary Kaemingk noted that in view of the Criminal Justice Review, it would be a good opportunity to educate other legislators on those efforts. Chairman Tieszen felt that by the Budget Address, the Criminal Justice

Review workgroup would have information to share, so even if there is no proposed legislation from other legislators and that it would be appropriate to schedule a meeting in December to discuss the review.

Representative Lucas suggested waiting until spring 2013 for the Commission's visit to Custer. He also suggested that the Commission could review a draft of the annual report at the December meeting before this is sent to the legislature and governor.

Chairman Tieszen suggested a meeting after the Governor's Budget Address, as the Governor might have Criminal Justice Initiative-related remarks in the speech.

Jim Seward noted that since the reforms that come out of the initiative will involve all three branches of government. One suggestion is that event could be scheduled between the Budget Address and the State of the State to announce Criminal Justice Reform policy package which would involve the workgroup, the Chief Justice, the Legislature, and the Governor.

The next meeting was tentatively set at 8:00 a.m., Tuesday, December 4, in Pierre in the Capitol, to coincide with the budget address.

Chairman Tieszen asked for any other business and recognized Representative Kloucek. Representative Kloucek commended each member of the commission for their service and the Department of Corrections for making Mike Durfee State Prison work for the people.

Representative Carson moved to adjourn. Senator Bradford seconded the motion, which motion carried. The meeting adjourned at 3:30 p.m.