

South Dakota Corrections Commission
Black Hills Correctional Transition Center
May 22, 2012
Approved Minutes

The meeting of the South Dakota Corrections Commission was called to order at 2:30 p.m. by Chairman Craig Tieszen. Other members present were: Judge Robin Houwman, Judge John Brown, Representative Lance Carson, Representative Larry Lucas and Senator Jim Bradford. Present by telephone were Mr. David McGirr, Mr. Mark Anderson, and Mr. Timothy Bottum.

Representative Jacqueline Sly was also present, as were Secretary Denny Kaemingk, Communications and Information Manager Michael Winder, and Policy and Compliance Manager Aaron Miller from the Department of Corrections. Attending from the Governor's Office were Chief Counsel Jim Seward, Policy Analyst Will Mortenson, and interns Chris Healy and Hanna McElroy.

Chairman Tieszen introduced new commission member Judge Robin Houwman and asked her to speak briefly about her involvement with corrections.

Judge Houwman stated that she was appointed to the Second Circuit bench three years ago by then Governor Rounds and is just completing a three-year term on the felony criminal bench and will rotate to civil and family law practice in July. She replaced Judge Patricia Riepel on the commission.

Chairman Tieszen asked for any corrections to the draft minutes from the commission's March 19, 2012, meeting in Pierre. Representative Carson moved that they be approved, Representative Lucas seconded the motion, which motion carried and the minutes were approved. Senator Bradford stated that the minutes reminded him that he would like to see a racial breakdown by county of adult inmates. Aaron Miller indicated that the information would be provided to Senator Bradford in the next few days.

The next agenda item was election of officers. The Chair asked Aaron Miller for an explanation of the requirements. Aaron Miller noted that by statute, the Commission elects a Chairman and a Vice-Chairman at its meeting in the spring of each year, and that the statute does not preclude reelection of sitting officers. The Chair opened the floor to nominations. Judge Brown nominated Craig Tieszen for Chair. Judge Houwman seconded the motion. There were no further nominations. Senator Bradford moved that a unanimous ballot be cast for Senator Tieszen. Representative Lucas seconded the motion and the motion was carried.

The Chair opened the floor to nominations for vice-chair. Senator Bradford nominated Representative Lucas. Judge Brown seconded the nomination. Judge Brown moved that nominations cease and that a unanimous ballot be cast for Representative Lucas. Senator Bradford seconded the motion, which motion carried.

Chairman Tieszen asked if there were any additions to the agenda. There being none, he proceeded to Secretary Kaemingk and the DOC staffing update.

Secretary Kaemingk began by explaining that Chairman Tieszen had asked for an update on DOC staffing. He expressed his thanks for the Governor and Legislators who supported the reclassification of Corrections Officers from N11 to N12 and for Sergeants from N13 to N14. DOC had been experiencing elevated rates of staff turnover, particularly with security staff assigned to adult facilities. The job descriptions of correctional officers and youth counselors at STAR academy, qualifications requirements,

and work environment were studied. The unfavorable work environment determination allowed for the reclassification of COs to N12 and Sergeants to N14. That helped stem the turnover considerably. Initially, that change was to take place in July, but because the turnover continued through the fall, the Governor allowed DOC to put it in place in February. The Governor and Legislature also provided a bonus to state employees and approved a 3 percent cost of living adjustment. In December, DOC had four months of lower turnover than in the previous year. In April, that jumped by two as 16 departed last year and 19 did this year. Of those employees who were Correctional Officers, six COs were in Sioux Falls and four were at the South Dakota Women's Prison where three resigned and one transferred. At the penitentiary, three of the six resigned. Secretary Kaemingk believes this is just a little bump and is looking forward to a good year of staff retention and will continue to monitor it over the summer.

Chairman Tieszen noted that the changes seem to be having the desired effect on turnover rates.

Representative Lucas asked about the work environment for teachers at STAR and whether their work environment was considered safe. Secretary Kaemingk responded that was correct.

Chairman Tieszen stated that the next agenda item was Work Release Review. Secretary Kaemingk addressed the commission.

On May 7, a work release inmate in Sioux Falls was given a three-hour furlough to interview for jobs in the community. This is a normal practice. The inmate was classified as a minimum security risk, and those so classified can go out on work release 30 days later. The inmate, Henry Anfinson, was on work release and had traveled to a couple of businesses looking for work in the time he was gone. He returned to the unit at 3:50 p.m., 10 minutes before his furlough deadline. He had been at a woman's house where he is accused of sexually assaulting her and he was subsequently arrested for that. The Department of Corrections is cooperating with the Sioux Falls Police Department in the investigation. Those are the facts at this time.

Chairman Tieszen asked if DOC reviewed work release in general as a result of this specific situation and asked what DOC has done in response to this incident. Secretary Kaemingk responded that anytime an incident of this type occurs, DOC reviews the incident and inmate population, DOC practices, policies, OMs, etc. DOC has investigated the particular situation and reviewed the 230 inmates classified as work release eligible; the requirement for work release is an inmate within a year of his or her parole date or end of sentence. Neither violent offenders nor sex offenders can receive work release. Inmates apply for work release and agree to the stipulated rules. DOC reviewed its 230 work release inmates statewide in the minimum custody facilities. From that review, DOC identified three work release individuals they were uncomfortable with. The three met DOC classification and policies, but because of the discomfort level, DOC has revoked work release for those three inmates.

Representative Lucas asked about what would be done with Henry Anfinson. After DOC investigates, will he either go to court on the charges or can DOC revoke his privileges based on him being where he was not authorized to be? Secretary Kaemingk noted that the Sioux Falls Police Department is investigating and has made an arrest. Anfinson was taken into custody but was returned to the Penitentiary the same night. Charges have been filed against him.

Senator Bradford is concerned about repercussions on those inmates who remain in the program. A bad apple does not make the whole barrel bad. Senator Bradford hopes work release will continue as the program offers inmates an opportunity to improve themselves.

Secretary Kaemingk noted that DOC is in the risk management business and DOC's rules and classification system have proven very effective for the hundreds and thousands of work release inmates who have gone through the system in the past few years. At some point, a judge decided the people in prison needed to be incarcerated. DOC can leave them there for the duration of their sentences, but that would be in anyone's best interest. A better option is lowering their risk factors through programming so they may be successful in their transition back into the community. Mr. Anfinson was scheduled to flat his sentence in July of this year.

Chairman Tieszen summarized that this incident did not result in policy change but in the reclassification of three inmates out of 230. Secretary Kaemingk responded a policy change has been drafted but is not yet final. Chairman Tieszen wishes to be briefed on the final policy changes made as a result of this incident at the next meeting.

Chairman Tieszen introduced Jim Seward, the Governor's General Counsel.

Mr. Seward thanked the Commission for granting him time on today's agenda to speak about the Public Safety and Criminal Justice Workgroup. He indicated that he had already met with the judges on the Commission separately.

Governor Dugaard, Chief Justice Gilbertson, and legislative leadership from both parties have asked the Pew Center on the States, a charitable trust in Washington, DC, to study South Dakota's criminal justice system. Last fall, the Chief Justice and the Governor began discussing DUI courts, drug courts, and other alternative courts in South Dakota. Mr. Seward has been working with the Department of Corrections, starting to look at the number of inmates, the facilities, and the crimes for which they are in prison.

Pew has been assisting states around the country to reform their criminal justice systems. Texas, which built 100,000 prison beds in the 1980s and 1990s and is known as tough on crime, adopted sweeping reforms to prevent the need for another 17,000 beds. The South Dakota Women's Prison is nearing capacity and is only 10 years old. Mr. Seward has asked for estimates of what it will cost to build the next prison and the next one, so we can be responsive. If South Dakota is going to grow its facilities, we should know what they are going to cost so we can tell the Corrections Commission, the Legislature, the judges and the Governor that we need \$150 million or we need \$50 million, whatever the number is. Mr. Seward was amazed to learn from the PEW Charitable Trust that 19 states in the last decade have lowered their incarceration rates and lowered their crime rates and controlled corrections costs, all at the same time. Governor Dugaard and Chief Justice Gilbertson have adopted PEW's mission, which is to increase public safety, hold offenders more accountable, and control corrections costs. Sometimes, that cost savings is reinvested in other things.

PEW does not have a one-size-fits-all solution. They help a state analyze its data. Unified Judicial System (UJS) has a lot of data. DOC has a lot of data. Will Mortenson has been helping Mr. Seward look at the data from those two agencies to see how it compares. After two months, this is their 30th stakeholder meeting and is the last one scheduled. Recently the legislative leadership, the Chief Justice, and the Governor signed a letter asking the PEW Charitable Trust to provide South Dakota with technical assistance this year. They have already accepted Oregon and will pick one more state. Even if they don't pick South Dakota, Mr. Seward has been assured they will assist the state because we have done so much groundwork. They have met with the Chief Justice, the Governor, and the legislative leadership and have been impressed with our efforts in South Dakota.

The Governor has said he would like to study this issue because South Dakota looks like an outlier. When compared to other states, our state incarcerates a lot more people than many other states do. The Governor has stated that maybe SD is doing it exactly right. Maybe we shouldn't change any laws or change the way we do things, but we should not be afraid to look at ourselves and make sure we are doing it right. That's the mission that we are undertaking, to analyze the data with the help of PEW. The Chief Justice, the Governor, and the legislative leadership will all appoint people to a bipartisan summer workgroup. Our hope with everyone involved, and with some experts from PEW and around the state of South Dakota, we can take a look at what we are doing and if we need to make some changes, we can come up with a package which the Legislature can consider.

Among the things PEW focuses on are nonviolent offenders. These are not necessarily the people that judges or society is scared of--nobody is suggesting we do anything different with the 200 lifers housed by DOC—but some of the other offenders that frustrate judges are the ones PEW states we can focus on. Some states have changed laws, others have made administrative changes in parole and probation, and others have instituted incentive programs.

For instance, counties pay for county jails. State's attorneys have no incentive to put people in county jail because the county commissioners don't have to pay for prisoners' keep once they are in prison; the state does. Frankly, there is no policy initiative on the table yet, but it is the intention to study the issues and Mr. Seward wanted to continue that dialogue with the Corrections Commission and get the members' ideas and thoughts. In 1980, in today's inflation adjusted dollars, we were spending about \$19 million on Corrections. Last year, before the Governor and Legislature cut the budget 10 percent, we were almost at \$100 million, so in 30 years, the Corrections budget had gone up five times. Nobody is suggesting it will go up five times again in the next 30 years, but ironically, we are here opening a new facility today. South Dakota will need a new women's facility in the near future. If we do not make some change, PEW calls that the cost of doing nothing. With some professional help from econometricians, we will learn our cost of doing nothing. If the Legislature, the Governor, and the Chief Justice say that cost is fine, we will continue the way we are headed, but the Governor has asked us to study that and that is what we are going to do.

Chairman Tieszen asked Mr. Seward to elaborate on the workgroup and its formation and size.

Mr. Seward stated that it is still in flux because PEW has a lot of input due to their experience and research into these issues. The Chief Justice will be appointing people; the legislative leadership of both parties will be appointing people and the Governor will be appointing people. We anticipate there will be stakeholders from chiefs of police and sheriffs, state's attorneys, and treatment providers. PEW is in the final stages of their analysis, and he believes South Dakota will be getting a phone call. They have many people in their offices in Washington, DC, and they have a very deliberative process to go through before picking a state. They spend about \$1 million in technical assistance between travel and experts and data analysis. They will hire private companies with experience to look at our projections. We have done projections to estimate where our population is headed, but we really don't know who will show up next month. We do not know how big the workgroup is going to be, but it will be a diverse group of folks. We encountered a ton of interest as we met with defense attorneys and state's attorneys and judges and legislators. We have probably gotten 60 volunteers. We will send a report, initially on a monthly basis, to groups we meet with to keep people informed about the topic. The meetings will be open to the media. Hopefully people will stay informed throughout the process so that by the time we get to the legislative session, nobody will wonder what this three-branch, bipartisan group has come up

with. It started with just a discussion between the Governor and the Chief Justice talking about drug courts and its scope has grown and it could bring meaningful change to South Dakota.

Representative Carson asked about the 19 states PEW has already helped reduce their prison populations. He asked if it involved more out-patient treatment, out-patient counseling, and those types of things. He asked for a description of how they reduce these numbers and the cost to the public.

Mr. Seward indicated he has seen changes in parole and probation in other states. South Dakota has 2800 on parole with 2400 supervised in South Dakota. Nebraska, which has a million more people than we do, has about 1000 people on parole. We have over twice the number of people in prison as North Dakota has. Mr. Seward just read a 20 or 30 year old report that Governor Janklow had done on the same topic. When SD became a state, we adopted the death penalty. North Dakota didn't and we have been divergent ever since with regard to our criminal justice system.

PEW will look at the data and try to figure out what makes this state different in its population. Then they look at what other states are doing using evidence-based, data driven policies that seem to be working, and then they will focus on those. It might be dealing with offenders up front. Some states have called their efforts Justice Reinvestment. Texas determined that low-level, nonviolent felons who have no record might be able to serve time in a half-way house. We have the 24-7 program in South Dakota. Last week, Mr. Seward visited with Judge Long and the Sioux Falls judges and how that program holds people more accountable. In South Dakota, 68 percent of female prisoners are in for drugs and alcohol. Twenty years ago, over 80 percent of inmates were incarcerated for property crimes or violent offenses. Today, that number is about 40 percent. The judges of the Seventh Circuit told Mr. Seward that South Dakota has a great methamphetamine treatment program, and the judges send women to the prison to receive treatment.

Representative Lucas asked about prevention programs in other states and whether they are looking at starting in schools. Mr. Seward indicated some states are doing that. He read on the PEW web site that in some states, they are focusing on juveniles. They do not recommend trying to do adults and juveniles at the same time.

Representative Lucas indicated the Rosebud Tribe is taking more initiatives with juvenile offenders and in fact built a juvenile prison. The problem is systemic, and it starts with the family. Todd County School District has 50% of its students chronically absent, meaning they enroll late, they leave school early, or they miss over 20 days of school per year. There is another 11% who have excused absences. Only 38% attend regularly. Those that do not attend regularly often fall into alcohol, gangs, and drugs. The attendance problem starts with Kindergarten.

The Governor adopts the PEW mission of increasing public safety and holding offenders accountable. If we have to reinvest in some other things, whether that be treatment or half-way houses or prevention, Mr. Seward feels the Governor is open to considering those options proved to be data driven best practices.

Senator Bradford stated South Dakota has to face the fact that this state has more reservations and Indian people than Nebraska or North Dakota. Our inmate population includes a number of Native Americans. Mr. Seward indicated that 45 percent of the females are Native American. Senator Bradford feels there is a correlation with the lack of extended family in the areas where the crimes are

committed. Additionally, we have to consider that some of these people end up in federal facilities instead of state facilities. He asked if the prison population was increasing because of parole and probation violations.

Mr. Seward responded that the Department of Corrections has made great strides in reducing recidivism. Because of some things beyond their control, whether it involves legislation, the criminal code, parole board, etc., sometimes inmates have to be sent back to prison. Certainly, recidivism plays a big part in that.

Senator Bradford recalled that during his first year in the Legislature, he went to Michigan and heard officials talk about their reentry and how they revamped it. Michigan has a heavy population of Native American people there, too, in their prison system. From his own experience, he knows of three South Dakota Native Americans who have gone to prison and returned home with no reentry help at all. The only help they received was from their family. Some Native American people do not have the family there to help with their reentry.

Mr. Seward indicated that PEW has never worked in a state with demographic mix like South Dakota. They have worked in some diverse states such as Georgia, but they find our demographic mix challenging. He is hopeful that they will bring in some expertise to assist in that area.

Senator Tieszen requested a possible timeline for the workgroup. If South Dakota gets the call, or even if we don't get the call, what framework are you looking at?

Mr. Seward indicated they had planned to start in early June and work through early October, in hopes of having a recommendation to the Governor and the Chief Justice in the form of legislation or administrative changes by mid-October so they could take that to all the legislative members well in advance of session. The end line is still similar. Because of some logistical challenges with Pew, it now looks like it will start July 18. He hopes to try for two meetings in July and two in August. The reason we are waiting is Pew has begun to gather data from South Dakota to help create the population projections and what that will mean in dollars. He anticipates one or two meetings in September and still wind up the first week in October. That is an aggressive plan. Several states took two years to do this. It requires real commitment, hard work, and perseverance. He hopes to have a plan to the legislators a month or so before session. Pew demands that it be a three-branch, bipartisan effort.

Mr. Mark Anderson asked whether they will look at the reason behind the crime? For instance, if someone writes a bad check, will the gambling, divorce, or big medical bill reason behind the bad check crime be taken into account in the data?

Mr. Seward indicated that one of the things Pew looks at is 60% of the South Dakota prison population is there for drugs and alcohol. The Judges would tell you another 20-30 % of those there for property crimes and violence that are related to drugs and alcohol. There is some of that analysis, but it is very difficult to track in the data. Pew might rely on some national statistics to try to figure that out. They may do a small sampling to study files. If we get the kind of technical assistance we are requesting from Pew, they will actually move some people into South Dakota for a good portion of the summer to dive into the data. Mr. Seward will try to get an answer to that question and get it back to Chairman Tieszen so he can get it out to the members.

Chairman Tieszen noted that he has had the opportunity to review some of Pew's work. They are highly regarded in the criminal justice arena and have the respect of all sides on these issues. This study will be useful and helpful to South Dakota. The chairman believes the schedule is very aggressive.

Judge Brown noted that mandatory sentencing may constitute a difficult data effort and he is certain Pew looks at this to some extent, but it would be interesting to learn how that impacts where our prison population goes.

Mr. Seward is certain that they will look at that, because they were very intrigued with some of the laws we have. We seem to be the only state in the country where ingesting is a felony and that law seems to send a lot of folks to prison. Mr. Seward stated that Pew was interested in that.

The Chair asked if there was any new business.

Chairman Tieszen said that those in Rapid City had discussed holding the next meeting in Springfield at August 27. Mr. McGirr noted that he will be in Florida that day, but he may be able to call in. Chairman Tieszen set the meeting tentatively for a noon lunch, followed by a tour, and a business meeting at 2:00 p.m.

Representative Carson moved the meeting be adjourned. Senator Bradford seconded the motion, which motion carried.

The meeting was adjourned at 3:30 p.m.