

ATTACHMENT E

ACLU of Nevada
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July 10, 2006

Memorandum

To: Board of Prison Commissioners From:
ACLU of Nevada
Re: BOPC Meeting, July 11, 2006:
Agenda Items V and VI

The ACLU of Nevada has been a frequent and invited contributor to several hearings before the legislature's ACR 17 Sub-Committee to Study Sentencing, Pardons, and Parole. Presenters to that committee, including NDOC director Glen Whorton, DOC Director of Programs Dorothy Nash-Holmes, representatives of the Department of Parole and Probation, ACLU representatives, and numerous community members, have spoken in-depth about current issues affecting incarceration in Nevada. The Sub-Committee has discussed DOC policies, current conditions of confinement, and most importantly, the degree to which administrative policies and regulations reflected the legislative intent of their enabling statutes.

It has been consistently true that at these meetings, the number of contributors from the video-conferenced room in Southern Nevada has equaled or exceeded that from Carson City. For this reason it is particularly unfortunate that there has been reduced public access for this meeting, which is so clearly related in content and interest.

In addition to the fact that the July 11, 2006 Board of Prison Commissioners meeting is being held in Carson City with no teleconferencing facilities, the full text of almost 600 pages of new Administrative Regulations was not available to the public until late in the day on Friday, July 7. Much of the new, revised, and rescinded AR text is substantive and relevant to issues brought before the ACR 17 Committee. It was therefore almost impossible for many members of the public or the advocacy community whose interest in DOC issues has brought them to each ACR 17 hearing to analyze the new administrative regulations in full.

We are not in any way suggesting that this meeting is held either in bad faith or in violation of the public meeting laws. In fact, the Governor's counsel, Rene Parker, has been very responsive and the IT staff at NDOC has worked hard to ensure that people had access to these materials electronically- However, we believe that the review of the proposed ARs would

benefit from the input of those who have regularly been participating in the legislative committee process.

While we fully appreciate the difference between the policy duties of the legislature and executive agencies, there should not be an easily-avoided disconnect between the intention of the legislature and changes to the ARs. The ACR 17 Committee, at its final meeting, voted unanimously to send a letter of concern to Governor Guinn regarding certain conditions within NDOC. We will point out below some places in the new ARs where we think the AR changes relate to these concerns of the ACR 17 Committee. The public, who has attended and participated at these meetings, is a crucial check to ensure that the branches of government are working in informed and consistent manner with regards to policies in the correctional institutions of Nevada. We urge this Board to send any approved AR changes to members of the ACR17 Sub-Committee so that they may factor new AR language into their legislative process.

1. Overhauled Regulations: AR 100

AR 100. It seems from the new language of AR 100 that the AR process will now be more streamlined and contained within NDOC in its entirety. While we do not know the degree to which non-NDOC officials were included in past AR Committees, it seems that inclusion of diverse officials would strengthen the AR process and encourage communication between NDOC employees and those at Parole and Probation, for example.

2. New Regulations.

AR 101. There has been extensive discussion of an NDOC audit within the ACR 17 hearings. The committee unanimously voted to urge the Governor to consider an audit of NDOC. The ACLU of Nevada has continued to request an independent, outside audit of NDOC policies. While nothing in this AR would prevent such an audit, this regulation allows only for a non-mandatory, self-initiated departmental audit. We hope any such audit would be also be public information, so that advocates and legislators can better address problem areas. Audits should also be focused on areas identified as deficient by prior audits.

AR 143.01. Inmates should have access to the Internet for legal research purposes. Institutions should be able to arrange for limited, monitored use of legal online resources, which are the primary tool of legal professionals. Online use can easily be restricted to pre-approved official websites. An outright ban on Internet usage is an overly broad way to manage oversight concerns, when such a crucial tool of legal research is at stake.

AR 123, AR 155, and AR 801 an relate to issues of concern discussed during ACR 17 hearings, and we appreciate that NDOC officials have previously reported on the contents of these regulations, and explained the new AR changes before that Committee.

3. Revised Regulations.

AR 114. We request that videoconferencing to Las Vegas be provided for in an future meetings of the Board of Prison Commissions. We believe that the level of public interest in issues relating to incarceration would justify such a provision, and ensure compliance with the spirit of the Open Meeting Law.

AR 245. This regulation relates directly to an issue agendized and discussed at length before the legislative hearings. Our overriding concern continues to be that since charging decisions are not made by those with any medical knowledge, inmates are frequently overcharged for each visit, even if related to an ongoing condition. In addition, the amount has gone from a set \$8 fee to an undetermined amount, and the amount to obtain medical files has gone from 60 cents per page to an undetermined amount in the new AR text. These amounts are a matter of utmost importance to many inmates, particularly those with ongoing medical issues. These amounts should be set in advance to ensure that inmates can make informed decisions about whether to obtain records or medical services, which are often the most crucial and personal decisions an inmate is faced with. It would be inappropriate for NDOC to charge a perpage amount in excess of the actual cost of copying an inmate's medical file. The state should never profit from charging for access to one's own personal medical information.

3a. **Medical ARs.** Some serious discussion has occurred in ACR 17 hearings about

inmate medical, dental, and mental health care. This discussion was prompted by mass complaints by inmates, particularly female inmates, to the ACLU and other advocacy organizations. These complaints were compounded by some significant personnel shakeups at the SNWCC, where employees reached out to the ACLU after they felt they had been retaliated against by DOC officials for their advocacy on behalf of inmate medical and mental health care. In response, the ACLU has completed over 120 interviews with women experiencing difficulties at SNWCC, to determine if widespread patterns could be found. Employees of the ACLU of Nevada testified, under penalty of perjury, to the results of those conversations. Below, we highlight some areas of concern that continue, sometimes despite good AR language to the contrary. We realize this is not a forum for general grievances about medical care within the institutions, but feel we would be remiss in not noting the effects of some ARs on our continuing concerns.

AR 606. Inmate health workers should be required to sign a code of confidentiality, and forbidden from discussing other inmates' personal medical information.

AR 617. This regulation notes that inmates are not charged for "follow-up visits initiated by a medical professional." We have received dozens of reports that results to tests (pap smears, blood tests, X-rays) are often delayed for months, and inmates refrain from asking for the results because they will be charged. We urge you to consider not charging inmates simply requesting their test results after a reasonable period of time.

AR 623. Female health care should include mammograms for women over 45, and especially for those with a personal or family history of cancer.

AR 631. We continue to advocate for some measure of preventative dental care for longterm inmates. Presently, there is no preventive care, as prioritization renders routine care below the list of necessity. Yet, preventive care could save the DOC money for long-term inmates whose teeth rot during periods of incarceration with no annual dental care.

AR 639. AR 639.03 allows physicians to deny an inmate review of their medical file. Review of one's own medical file is crucial to good health, sometimes necessary for litigation, and should not be denied for any reason short of a danger to the inmate. As sensitive information can be redacted and review is limited to once annually, it is difficult to imagine a situation where it would be appropriate to completely deny an inmate access to his or her own medical file, and such absolute denial should not be allowed.

AR 643. Like its predecessor AR, 643.02 requires that inmates arriving at NDOC on psychotropic medications will be continued pending in-house review. Unfortunately, this is not the procedure in practice at SNWCC, where virtually all psychotropic medications are confiscated upon intake as standard operating procedure. We have observed this policy pattern among dozens of inmates, all of whom were taken abruptly off well-performing psychotropics, when such abrupt termination is contraindicated. Virtually every mental health patient we spoke with at SNWCC described an identical confiscation procedure.

We appreciate the opportunity to contribute these remarks, and recommend that this Board offer statewide access to these public meetings in the future.