



STATE OF NEVADA
DEPARTMENT OF CORRECTIONS



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MINUTES

Of the meeting of the

BOARD OF PRISON COMMISSIONERS MEETING

December 17, 2013

The Board of Prison Commissioners held a public meeting on Tuesday, December 17, 2013 beginning at 10 AM at the following locations:

Meeting Location:

Guinn Room
State Capitol Building Annex
2nd floor
101 N. Carson Street
Carson City, NV

Video Conference:

Grant Sawyer State Office Bldg
Room 5100
555 East Washington Ave.
Las Vegas, NV

I. Call to Order.

The meeting was called to order by Governor Sandoval, Attorney General Masto and Secretary of State Miller were present.

Also present from the Nevada Department of Corrections were Director James “Greg” Cox, Deputy Director Support Services, Scott Sisco; Deputy Director Programs Sheryl Foster; Deputy Director Operations, E.K. McDaniel; Deputy Director Prison Industries Brian Connett; and members of the public. Members of the public in Carson City and Las Vegas were asked to sign-in. [Attachment 1](#)

II. Public Comment.

Gene Columbus who represents the Nevada Correctional Association said he had the opportunity to speak with the Director and Deputy Director. He said he wanted to submit their AR proposals.

[Attachment 2](#)

Former U.S. Senator Richard Bryan said that he has appeared before the Board on several occasions on behalf of his client XL Steel regarding their concern with the prison industries program. He said he was pleased to report that he has worked closely with Director Cox on Administrative Regulation 854. He believes the AR thoroughly incorporates their concerns without jeopardizing the Prison Industries Program, which he acknowledges is very important for the State of Nevada. He said his sole purpose for being there today was to thank the Board for their consideration. He could not be at the last Board meeting and the Governor continued the review and approval of AR 854 to this current meeting. He again thanked Director Cox for working with him on this AR and wished everyone a Merry Christmas. Governor Sandoval asked him if his client is in full support of AR 854. Senator Bryan explained that Director Cox used some of his wording suggestions and that he and his client approve of the final

version of this AR. Governor Sandoval thanked him for his comments and wished him a Merry Christmas as well.

III. Acceptance and Approval of Minutes – October 15, 2013 meeting. Governor Sandoval reminded everyone that we had technical difficulties with both the primary and backup recording devices used at the last meeting. He asked Director Cox what the minutes were based on. Director Cox stated recollection and notes taken by his Executive Assistant Cynthia Keller. The minutes from the October 15, 2013 Board of Prison Commissioners meeting were approved.

IV. Update on the Department of Corrections Staffing Study being conducted by the Association of State Correctional Administrators (ASCA) – Greg Cox, Director stated that ASCA has completed their tour and analysis of all facilities except Tonopah Conservation Camp and Pioche Conservation Camp. He said ASCA was provided with information and staffing plans of all facilities. ASCA will send their draft report in a couple of weeks. Director Cox said he met with all the members of their committee and they have done a very thorough job of talking with staff from all across our organization. Director Cox stated this study gives our Department the ability to move forward for the next five to ten years with a very proactive and thorough approach regarding our staffing issues and that this study was absolutely the right thing to do.

Governor Sandoval asked him for more specifics as to who was able to give them input in regard to staffing. Director Cox said Correctional Officers, Sergeants, Lt.'s, Shift Supervisors, Associate Wardens, and Wardens. The Governor stated that he wanted to make sure this was a very comprehensive study and that everyone has had an opportunity to provide input. He doesn't want someone coming back later and saying they did not have a chance to have their say during the study. Director Cox agreed and stated he will also speak with Gene Columbus from NCA and to the other association about the study. His intent is to put the study on our website for everyone to be able to review it.

The Governor asked when Director Cox anticipates a study to be completed because he would like to have time to review it and see if there is any fiscal impact and to build it into the budget if there is. Director Cox said he expects the completed draft by March 1, 2014 for his review.

V. Overview and Discussion of AB 422 of the 77th Legislative Session requiring the Director of the Department to request autopsy upon death of an offender where the next of kin of offender consents or fails to object to autopsy within 72 hours after death - Greg Cox, Director (For Possible Action) Director Cox said that in a prior legislative sessions he had tried to move forward with this autopsy bill. He has wanted the NDOC to be transparent and handle inmate deaths the same as other states have and provide this information to families and citizens. He feels it is the right thing to do to inform the public of deaths of inmates in NDOC custody. Regarding his request for autopsies, part of the process in this state is to build a budget for autopsies.

Director Cox said he has received stakeholder input regarding AR 420 which he will talk about later. He has also received information from Medical Directors and from other states and from the Coroner's office. Director Cox said he would like to compile all this information and put forth AR 420 at the next Board of Prison Commissioners meeting.

Governor Sandoval commented that this new law was recently the subject of a recent press article and asked if Director Cox wanted to comment on that. Director Cox said yes, this Department has in the past and again recently put forth this bill and it finally passed. He said that, "The transparency of the Department is very important not only for me as the Director but for our employees and to the inmate population. Inmate death notifications and autopsies are nationally recognized and it is the right thing to do." He said they are educating as many stakeholders as they can, and they have been getting information back from Coroners' offices in Washoe County and Clark County on the processes.

Governor Sandoval asked if other states are doing this. Director Cox said that he has spoken with Western Directors and; Utah, Idaho, Wisconsin, Colorado and he believes California are all doing this for transparency. Governor Sandoval asked if it was a statutory change like ours or was it a regulation in other states. Director Cox explained that generally this has been done statutorily so that there is no misunderstanding of what the Department has to do. This way it would take a change in law to change it a Director or a Board could not make that decision.

Secretary of State Miller said that the article implied that the Department was not complying with the new statute and gave an example that there was one autopsy not yet performed. Director Cox stated that they are doing everything in their power to comply with the law.

Attorney General Masto asked Chief Deputy Attorney Joe Reynolds to come to the table with Director Cox to help clarify the Office of the Attorney General's involvement in assisting the NDOC in complying with this new law. Chief Reynolds stated that there is a litigious posture concerning the interpretation and scope of this bill and new statutory provision. He said it is their understanding that this bill provides the Director with the authority to order an autopsy but one is not mandated for every case. Director Cox has discretionary authority. There is some ambiguity in the statute and some questions about whether that discretion is discretionary or mandatory. It provides some provisions about consultation with the Medical Director and the Inspector General's office. It was intended, in his opinion, to provide the ability to order an autopsy but ordering one is not mandatory in every case. Governor Sandoval asked if the interpretation of the statute is currently in litigation or will potentially be in litigation and Chief Reynolds said there is the potential. [Attachment 3](#)

VI. Overview and Discussion on the Federal Communications Commission Order 13-113 on Interstate Inmate Calling Services – Greg Cox, Director (For Possible Action) Director Cox explained this is a national ruling regarding interstate and intrastate phone rates that will impact the Department of Corrections. Deputy Director Sisco gave a brief presentation on the result of the December 24, 2012 FCC publishing of a Notice of Proposed Rulemaking regarding changes to rules governing rates for interstate interexchange inmate calling services.

Deputy Director Sisco said that when he presented to the legislature during the budget wrap up he mentioned that there were a couple of budget issues that he was keeping an eye on regarding a possible shortfall and this FCC ruling was one of them. He said that it was reported that not only did the industry raise concerns, but that many States including Nevada raised concerns about the impact this would have on programs to inmates. Deputy Director Sisco reported that at the August 9, 2013 meeting the FCC in ignoring the pleas from the industry and State correction facilities, voted to cap interstate inmate call rates at .12 per minute for debit or pre-paid and .14 per minute for collect calls. Sisco reported that while Nevada is joining other States, as well as the industry in appeals and suits, that the Department of Corrections must go forward with planning for the financial impact that the change will have on the Department of Corrections.

He explained that some states use their phone commissions to support regular operating costs however, the State of Nevada does not, and all of the commissions are used to benefit inmate programs. Governor Sandoval asked for a distinction between other states using the money for general operations and NDOC using the money to benefit inmates. Deputy Director Sisco said that some states use the funds to pay officer salaries, pay maintenance costs, heat, and lighting. Years ago the NDOC made a conscious decision to use these funds strictly for drug programs and other programs, gate money, cremations and primarily for indigent inmates that can't pay their own bills. For example a medical co-pay would be eight dollars and some inmates don't have the money for that. Also, each institution receives about \$100 a year for sports and recreational equipment. Director Cox stated that funding for these things also comes from money made from the inmates store and there is no money in our budgets to fund recreation, and they are not using tax payer money to fund these things. Director Cox also said that he is

working with Arizona and a number of States and Chief Reynolds looking at how we utilize the funds collected.

Nevada, other states and the service providers opposed the new rule as it would hurt the very inmates it was put in place to assist. The FCC voted 2-1 to implement the rule by February of 2014. It provided a very short amount of time for Departments of Corrections and the carriers to come into compliance with the new rule. Several carriers and Departments of Corrections filed for a stay of the order, however those requests were denied in November of 2013.

Deputy Director Sisco reported that inmate telephone calls will go from the current \$1 per connection fee and .13 per minute, to a flat .12 per minute for both local and intrastate. Interstate calls will go from \$2.50 per connection fee and .49 per minute to .12 per minute with no connection fee. The revenue this brings in is about \$2.7 million. Deputy Director Sisco explained that there is not an exact method in which to determine the financial impact in lowering the costs as it is possible that call lengths will increase as it has in the past when a new contract resulted in lower costs. We have looked at several scenarios. When the call rates go down the amount of calls and length of time of the calls go up. Governor Sandoval stated this is not a bad thing, we want inmates to be connected to their families and the high costs impacted it. He asked what the new rates will do. Deputy Director Sisco said the average length per inmate per call is 13.5 minutes and they had a couple scenarios that bring the calls up to 17 or 22 minutes. He said they are looking at that to best judge the shortfall of funds and prepare for them.

The Governor asked about inmates' access to the phones. Director Cox said they allow the inmates a tremendous amount of access to the phones. Governor Sandoval asked about the shortfall and Deputy Director Sisco reported that our analysis indicate that for the remainder of FY14 that the impact will be between \$33,000 and \$432,000, but that for FY15 the first full year under the new rates, that a realistic plan for the shortfall is estimated at a conservative \$650,000 per year.

Deputy Director Sisco went through the list of inmates programs that the revenues from the phones support. Included in that list was eight staff for the law libraries, eight gym managers, and two education staff. In addition, operating costs for the law libraries, recreational and gym equipment. Deputy Director Sisco continued stating Inmate indigent postage runs about \$79,000 per year. Each indigent inmate is allowed two postage stamps per week. The operating costs of the education program are about \$9,400 per year for operating supplies. Also on the list are inmate gate and travel money, indigent inmate cremations, indigent inmate property damage, television service, indigent medical stale claims, and grant match requirements for two substance abuse programs. In addition, 50% of the salary costs for the Inmate Services Chief and Gym rental. It was explained that some of these items had crept in during the economic downturn, but that they did support the inmate programs.

Governor Sandoval questioned the Inmate Services Chief salary and the gym rental. He wondered why NDOC had to pay a staff member from this fund and pay rent for buildings that are on their property. Director Cox said he doesn't disagree and that's why he's presenting this to the Board. The Governor indicated that these two items should be looked at during the next budget building cycle. The Deputy Director stated that the Department's Executive Staff was going to have an Executive meeting at the end of January in which the list of items for potential cuts would be considered taking into consideration any morale problems that might be caused by certain cuts. The Governor asked where the \$33,000 would take us to and Deputy Director Sisco said June 30, 2014. The Governor stated he was glad this was brought up now so we have until June to put together a plan.¹

VII. Update and overview on Prison Rape Elimination Act (PREA) implementation and compliance – Pam Del Porto, Inspector General, Department of Corrections (For Possible Action)

¹ The 'FCC 13-113 Report and Order and Further Notice of Proposed Rulemaking Adopted: August 9, 2013 Released: September 26, 2013' can be found at http://transition.fcc.gov/Daily_Releases/Daily_Business/2013/db1106/FCC-13-113A1.pdf

Director Cox introduced Inspector General Pam Del Porto and explained that part of her duty is to keep him abreast of all PREA issues. IG Del Porto stated that they have all the processes in place to notify other law agencies as required when staff either resign from work, or are terminated for offenses. The other notification that is in place is when an inmate is processed at intake if they make a claim against another agency for a staff member violating PREA; in turn the Sheriff or Chief of that Agency is immediately notified.

The grants from the Office of Criminal Justice Assistance have been approved. Also the three staff members that applied for PREA audit certification training were approved. They will fly out for training on January 12 through January 17. IG Del Porto wanted to state for the record her appreciation to the Office of Criminal Justice Assistance. Now the office of the Inspector General has a link on NDOC website available for viewing of specific information related to PREA including an e-mail address for any person wishing to make contact with, or a complaint to, the PREA Management Team in the Inspector General's Office. People can file a complaint or a claim anonymously.

PREA Intake Screening continues to operate in a testing phase at NNCC with revisions being made as necessary and as identified by casework and/or intake staff. IG Del Porto said that they received their first complaint from a new commit which prompted notification to outside law enforcement. So the process is working.

AR 573 will be before the Board soon. This is the AR in conjunction with the intake screening process. Youthful inmates as defined by PREA are inmates under the age of 18. IG Del Porto stated that they do have the management processes in place for the continued handling of the Youthful inmates. This allows for the separation, reporting of unusual occurrences and continued programming for the inmates while separated from the adult population.

Governor Sandoval asked if IG Del Porto is satisfied with the implementation of PREA. She said that she is satisfied with the progress given the huge task that this Department and all Departments face regarding PREA. The Governor asked what the biggest challenge is now moving forward. IG Del Porto said the offender management issue and the fact that every inmate has to be educated and the standard does not take into account any special handling that may be needed for particular inmates such as the HRP "high risk potential" or the mentally deficient inmates. The Governor asked how to educate these inmates? IG Del Porto said that the education process can start at intake. Additionally they have to educate every inmate that is incarcerated so she cannot state a blanket way that this would be done; it would depend on each population being served. For example; at Ely State prison, if an inmate cannot have a television in his cell, we have come up with another way. Governor Sandoval asked if this could be done via video and was told yes it may. He then asked Director Cox how they are handling this in other states. Director Cox said, having been in training with 40 other Directors and the Bureau of Prisons he asked about the eight prisons that were audited regarding implementation of PREA. He said all eight facilities were noncompliant based on issues associated with procedures and policies they had and not having enough cameras in the physical plant. There was a belief that it would be very difficult to become in compliance.

The assets and resources of the Federal Bureau of Prisons are very extensive compared to State facilities. Directors across the country look at them as the lead on these kinds of issues and if they (Federal Bureau of Prisons) are struggling with compliance then they (State facilities) absolutely will also. The Bureau of Prisons is steadfastly opposed to some of the requirements of PREA. For example when a staff member has to knock and announce before they walk down a wing. It was explained to Director Cox that they would have to go back to their unions to talk about working conditions. The administrative staff of the Bureau of Prisons did not feel it was a good idea for their staff to have to announce that they were going to walk down the wing. Governor Sandoval clarified that Director Cox was talking about Federal Prison staff having problems with this Federal law. Director Cox said that Federal law does not cut funding for Federal prisons for noncompliance; it only affects funding for State prisons across the country if they do not comply. Governor Sandoval asked what the consequences are for State prisons for noncompliance. Director Cox said a 5% reduction in Federal and funding for the

Department of Corrections. They are also looking at another 5% reduction in Byrne justice grants and for other public safety entities in our state. Concerns of Directors across the country are that they are having a difficult time implementing this with the Federal Bureau of Prisons. There is not enough allotted rollout time. Director Cox said he is working on a regional approach with other States to re-audit the process. PREA training will be conducted in South Carolina and they are not conducting any training on the West Coast. They are not doing any training for us until March or April and the rollout for us is in August so they're not giving us enough time.

Director Cox explained the NDOC is ahead of other states in getting grant funding due to IG Del Porto; "Other states have not yet done that however we have stepped up and gotten that funding for three of our staff to get the training." However he said he would like to get six to eight of our staff trained.

Another issue is the amount of time that our staff would have to audit other States agencies and Departments of Corrections as they take at least a week to do at other facilities. Governor Sandoval clarified that part of the law is that our staff has to go to other states to audit their facilities. Director Cox said that is correct. For instance if we audit California they would not come to audit us another state would. Also the Bureau of Prisons is paying approximately \$6,000 for every one of their facilities to go through this PREA audit process. The Western States are looking at a regional approach for auditing each other. All of our facilities must be in 100% compliance for you (Governor Sandoval) to sign off that Nevada is in compliance. Director Cox compared it to going to school and that if they are 100% compliant they get an A, if they are 98% or 99% compliant they get an F, there is nothing in between. He said that across the United States the Governors are going to receive a letter about being in compliance with the PREA standards. Our concern is that if the Federal Bureau of Prisons cannot manage to be in compliance how could a state facility? No facility that has been audited thus far has been found in compliance. [Attachment 4](#)

VIII. Discussion/possible action regarding State Administrative Regulations (Listed on Page 2)

Greg Cox, Director (For Possible Action) AR 420 Inmate Death or Serious Injury Procedure was pulled until the next meeting; all the rest of the Administrative Regulations were approved. Director Cox stated he hoped that they had this process in a better format for the Commissioners. He said they followed the Board's comments and suggestions such as bolding some things in blue and some in red. Governor Sandoval asked Director Cox to take them through the process that has gotten them to this point. Director Cox said they notify staff of any changes made to an AR and allow for their comments and input. They send the AR out electronically to all staff. For example Gene Columbus has sent his input on AR's 420 and 350. Director Cox explained then they get back to staff on their recommendations and let them know if we accepted their changes or if we did not. This allows for a tremendous amount of input from all staff and stakeholders. Once again, all Administrative Regulations were approved. [Attachment 5](#)

IX. Public Comment.

Patrick Mendez discussed the recent article in the Review Journal on the pregnant inmates in leg restraints. He said that it has been stated a number of times that pregnant inmates are not dangerous so he wanted to ask if the Board could place pregnant inmates on home confinement. He said it would be safer for them rather than having to be in a negative environment such as a prison, and the development of the unborn and ambulance costs. He wondered if they could do some sort of home confinement or workout an agreement with DPS to have prison officers pick up the pregnant intimate after she delivers her baby.

Mercedes Maharris thanked the Board for the opportunity to speak and stated she submitted some items for them. She said she is especially concerned about contracts that are being made now to stop grievances. She said she mentions it in her written submittals that to stop grievances is wrong and to have the inmate sign the property forms that she mentioned, without any representation, that some of them don't realize the ramifications of what they are doing. She said she thinks it is very important to examine that property contract form that they have to sign. She said, number two: she hopes that they will look forward in 2014 to implement the National Commission on Correctional Healthcare

Accreditation for each institution in the State of Nevada. She would like to add that to her wish list of accreditation by the American Correctional Association that she mentioned at the last meeting. She'd then wished everyone happy holidays and thanked them for the work they try to do. Governor Sandoval thanked Ms. Maharris and asked that staff in Southern Nevada make sure that a copy of her submissions are sent up there so he will have an opportunity to review them. [Attachment 6](#)

There were no further public comments.

Secretary of State Miller asked Director Cox how many ARs he anticipated bringing to the Board next year. Director Cox said approximately 15 to 20 per Board meeting. The Secretary of State asked how many times the Board of Prison Commissioners will be meeting; quarterly or only twice? Director Cox said; "The dates have not been finalized yet however the Governor has made it very clear he wants to stay on top of Correctional issues, as well as both you and the Attorney General have said the same thing." Governor Sandoval agreed and said that the Board will meet as often as they need to meet, to make sure that business is done in a timely manner.

Secretary of State Miller said he heard some suggestion that they would only meet twice next year and he shared concerns that the Board wouldn't be able to accomplish their Constitutional duty and that he thinks these Board meetings have been effective on a quarterly basis.

Attorney General Masto said that if the Director is having difficulty coordinating everyone's schedule that the three Commissioners come together once a month for the Board of Examiners meeting and there was a time when they had the Prison Commissioners meetings on the same day. She suggested that might be easier to coordinate everyone's calendars and that Director Cox could look at those days as well. Governor Sandoval said we will make it work.

X. Adjournment.

APPROVED THIS 18th DAY, MONTH OF MARCH 2014

GOVERNOR BRIAN SANDOVAL

ATTORNEY CATHERINE CORTEZ MASTO

SECRETARY OF STATE ROSS MILLER

Recorded and transcribed by Cynthia Keller, Executive Assistant, Nevada Department of Corrections