



STATE OF NEVADA
DEPARTMENT OF CORRECTIONS



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MINUTES

Of the meeting of the

BOARD OF PRISON COMMISSIONERS MEETING

March 18, 2014

The Board of Prison Commissioners held a public meeting on Tuesday, March 18th, 2014 beginning at 9 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. From the Department of Health and Human Services, Health Division, Dr. Tracey Green, State Health Officer. From the Office of the Attorney General: Joe Reynolds Chief Deputy Attorney General and Alicia Lerud Senior Deputy Attorney General. Also present were members of the public who were asked to sign-in. [Attachment 1](#)

II. Public Comment. There was no public comment in Carson City. Public comment in Las Vegas: Patrick Mendez spoke in regards to the employee housing agreements. He would like the Board to consider administrative regulation 425 which States the Department will allow all Department peace officers to secure personal weapons in their vehicles while on duty. He asks that the Board include similar language in any administrative regulations that address employee housing agreements. He also requests that peace officers who are in housing agreements are exempt from having their RVs subject to random searches. [Attachment 2](#)

Allen Liechtenstein General Counsel for the ACLU of Nevada spoke regarding the Valerie Nabors agreement and Administrative Regulations (AR's) 455 and 657. He thanked Joe Reynolds and the others who worked diligently on negotiating the settlement for their assistance. He said he was pleased with the cooperative agreement for the policy regarding shackling pregnant inmates and the breast pumping policy.

Governor Sandoval Stated that since there was no further public comments he would like to go into agenda item 4 now since Mr. Liechtenstein brought up the Nabors issue, and then go back to agenda item 3.

IV. Overview and Discussion on the settlement agreement between Valerie Nabors and the Nevada Department of Corrections :

Governor Sandoval thanked Mr. Lichtenstein for his cooperation in working with the State on this issue and indicated he thought the result is a good one for everyone concerned. One of the questions the Governor had in regards to the agreements was regarding the fee; he said the settlement was for \$130,000 and the ACLU was retaining \$50,000 of that settlement as their fee. He said he understood that the ACLU filed a complaint and then did negotiate the resolution of the case however there was no discovery conducted there were no interrogatories or requests for production and no depositions that were taken and the amount of the fee in this case approaches 40%. He asked if Mr. Liechtenstein had any comment on that. Mr. Liechtenstein replied that there was not the normal kind of discovery and interrogatories because the information was shared during the negotiations which took place over the course of approximately 2 years so the amount of attorney's fees was based on the amount of attorney hours involved. The Governor asked if this was not a contingency agreement. Mr. Liechtenstein Stated it was neither contingency nor hourly it was done by the ACLU without any agreement for the plaintiff to pay them as is normally the case, because this is a civil rights case. Section 1988 allows for recovery of attorney's fees based on the hourly rate and that is what they negotiated and in fact their hours were higher than that but as an accommodation because they were able to reach an agreement they slashed their request to what you see now. He said it was never going to be a situation where they were going to get part of Ms. Nabors award. He said it was based on federal civil rights case law section 1988 which allows for recovery of attorney's fees and that is what they based this amount on.

Governor Sandoval asked if any accommodations were made for the child in this matter. Mr. Liechtenstein said that any accommodation for the child would come through the mother; her award hopefully would be used for the care of her child. The Governor Stated his concern for the child was that the mother has subsequently been rearrested since the resolution of this case and she is pending trial for the subsequent charges. He asked if during their discussions any arrangements were made for the child in this matter. Mr. Liechtenstein said that the award for her and the attorney's fees were kept separate so hopefully she would use her award to take care of her child. The child was not part of this particular litigation. He said that once the money is distributed to the plaintiff they have no control over what she does with it.

Governor Sandoval Stated that the financial agreement has been approved by the Board of Examiners and that the final settlement agreement is contingent upon approval of ARs 455 and 657 by the Board of Prison Commissioners. Chief Deputy Attorney Joe Reynolds concurred. He said the decision was made early on when this lawsuit was filed to take a proactive approach in the settlement discussions. The Department of Corrections and its Inspector General's office did do an internal investigation of the facts and interviews and the prospect of taking this case to trial did not look favorable to the State. He said they did a comparative analysis on similar cases in other jurisdictions and in Tennessee, where a jury came back with a \$1.2 million award and there was the case out of Washington State that was a \$125,000 settlement. In Illinois there was a class-action where \$4.1 million in damages were awarded. With all this in mind they entered into negotiations with the ACLU. Governor Sandoval Stated he is not questioning the amount as he didn't think the case was defensible in the first place. He was just questioning that when you look at the settlement agreement it seems that almost half of the proceeds are going to the ACLU rather than the plaintiff. He thanked Mr. Liechtenstein for explaining the amount of hours spent on this case and that the ACLU had invested in this case and that answered his question as to why the amount of fees are what they are. He said that given the status of the plaintiff he was concerned about the child and any other children the plaintiff has but as Mr. Lichtenstein says that it is essentially going to be up to the plaintiff when she receives the proceeds of the settlement. Joe Reynolds agreed and said that it was up to the plaintiff and the ACLU how they split the final settlement. Governor Sandoval concurred with Mr. Liechtenstein and said this was a bad case with bad facts and the State should have

done an internal investigation as they did and the State should have entered into negotiations right away with the ACLU as they did, and resolve the case. He said that everything happened at least procedurally as it should have. He just wanted to probe a bit into the terms of the settlement agreement and he is satisfied with the answers that he was given. He asked if there were questions from the other Commissioners.

Attorney General Masto said that she did not have any questions however she noted that it appears that the action was brought by Ms. Nabors and not the minor child and that would have addressed the issue. Had the minor child been an additional plaintiff they would have looked at a minors' compromise such as putting the money in a blocked trust account for the child however it was the mother that was the plaintiff and that's why the money is going to her. Governor Sandoval said he sees that as well and was not questioning any of the decisions of the attorneys involved he said he thought the settlement merited a question in regard to the child in this case considering the status of the plaintiff.

Governor Sandoval said this agenda item is listed as for possible action so questioned attorney Marcher on any possible action the Board would need to take. Attorney Marcher said that once this Board approves the two administrative regulations that would conclude the settlement. Attorney Joe Reynolds concurred he said there were two pieces to this settlement, the financial piece which was approved by the Board of Examiners and the administrative regulations which will be approved by this Board. Attorney Marcher suggested taking the Administrative Regulations out of order and reviewing the two ARs in question now. Governor Sandoval said to respect Mr. Lichtenstein's time they would review the two ARs from agenda item 9 and put them up for consideration now.

Director Cox discussed AR 455 Use of Handcuffs and Restraints on Pregnant Inmates; he Stated they looked at policies procedures and the Statute in regards to how they would write this AR. He said that he Deputy Director McDaniel, Joe Reynolds and Alicia Lerud from the Attorney General's office worked very hard on these new ARs specifically for this inmate population. For AR 455, it requires an operational procedure for Florence McClure Women's Correctional Center. A critical component is the risk to staff, her, or others and the flight risk. Director Cox read the AR and explained it section by section. Governor Sandoval asked if there are any pregnant inmates now. Director Cox answered that yes and there are between 8 to 18 at any given time. The Governor asked if this proposed AR is the product of discussion with Mr. Lichtenstein and the ACLU. Director Cox said yes. The Governor asked Mr. Lichtenstein if this AR as it has been presented satisfied him. Mr. Lichtenstein said yes it does and that they worked very hard with Joe Reynolds on this AR to get to a point where they all agree.

Director Cox discussed AR 657 Breast Pumping Program. He Stated that he Joe Reynolds and the staff at Florence McClure looked at any type of regulation such as, this across the country, for review. They felt that this type of regulation was needed however many States do not have such a program as of yet. Director Cox read the AR and explained it section by section. He said the AR goes into minute details on how the program works. The Governor asked if the inmate cannot afford to pay for the pumping equipment if the State pays for it and Director Cox said yes it does. He said that participation ends after 12 months. Governor Sandoval asked if Director Cox would have any objection to being able to extend the program past 12 months if requested as many parents today prefer to breast-feed their children longer than 12 months and medical research has shown that it is beneficial to the child. Director Cox said he has no objection. Governor Sandoval Stated he did not want to delay the approval of this AR and asked Mr. Lichtenstein if the ACLU was on Board with this. Mr. Lichtenstein said he had no objection to adding a provision to extend the 12 month period if the inmate requested it. He Stated they would be happy to assist working on the language to amend this AR. Attorney Marcher recommended that the Board approved this AR as written today and it can bring it back at a future Board meeting with an amendment. Mr. Liechtenstein concurred and will work on the AR with the Attorney General's office and the NDOC. Secretary of State Miller asked when this program would become available. Director Cox explained that this program is in force now and it was started in November 2013. Secretary of State Miller pointed out that on page 5 of the settlement agreement the AR is referenced as 467 it needs to be amended to State AR 657. Motions to approve AR 455 and 657 as presented in agenda item number

nine were passed. The motion to approve the settlement agreement with the amendment proposed by the Secretary of State was also passed. The Nabors Settlement is [Attachment 3](#)

III. Acceptance and Approval of Minutes – December 17, 2013 meeting. The minutes from the December 17th, 2013 Board of Prison Commissioners meeting were approved.

V. Presentation & Discussion on Hospital Health Inspection Overview pursuant to NRS 209.382– Dr. Tracey Green, State Health Officer, Nevada State Health Division. The Dr. Green presented a summary of inspections and surveys of Nevada State Prisons and presented a spreadsheet, which summarized critical violations, conducted at each prison from 2009 through 2013. Dr. Green said today’s report would summarize inspections from 2013. She Stated that overall there were 10 violations and that overall there has been a significant improvement from last year to this year. Dr. Green explained that half of the violations were at one facility and that Director Cox and the Inspector General’s office had been working on correcting these violations. She said that in previous years they would see violations across all facilities however this year there were three facilities with no critical violations and again Stated that they are seeing significant improvement. Dr. Green Stated that there are no longer any outstanding violations, they have all been corrected.

Governor Sandoval commented on the improvement and asked about the nature of the follow-up on these facilities and the future audit schedule. He asked if they go into the facilities without notice to see what is going on. Dr. Green said absolutely and that the medical inspections are done twice a year and the dietary inspections are done once a year. She explained that if in fact they find a group of violations at a facility then there would be unannounced inspections at that facility after the fact. Dr. Green said they had found some issues with food labeling so they are looking at some educational work that they can do with staff to rectify this. On the medical side it is the paperwork for TB testing and they are working with Director Cox to make sure that the proper documentation is in place to show that all the testing has been completed. Governor Sandoval asked Director Cox if he had anything to add. Director Cox said that they are always looking to improve these facets of their operations. He said that he personally has toured the facilities to see where the critical violations happening and to assure they are being resolved. Governor Sandoval asked how this report relates to how NDOC has done historically. Director Cox said historically the past several years they have done a much better job as they have been very focused on this. He explained that they are educating their staff to understand these audits and their significance. He explained that they inspect themselves and follow up with corrective action plans and then go back and make sure they have been carried out and any violations have been repaired.

[Attachment 4](#)

VI. Update on Employee Housing Agreements pursuant to NRS 209.181 - E.K. McDaniel, Deputy Director, Department of Corrections. Deputy Director of McDaniel explained that they have vigorously started the process of building the two RV sites at both facilities. At Carlin Conservation Camp they are 95% complete; and that Humboldt Conservation Camp they are 90% complete. Governor Sandoval asked that he address the issues that were brought up by Mr. Mendez. Director Cox explained that they do have Administrative Regulations in place regarding the storage of a weapon. Staff can have a lockbox in their vehicle for firearms with the approval of the Warden of the facility. In regards to an employee having a weapon in their RV, which is their home, he Stated he would not violate their fourth amendment rights and their right to privacy. He said that they will certainly look at Mr. Mendez’s suggestions in regards to updating their policies regarding the RVs. The AR can be amended to allow a lockbox in the RV. Director Cox acknowledged that had he known about this issue previously it would have already been addressed. Deputy Director McDaniel added that the current AR is a very strict policy regarding what type of lockbox can be used and that they are inspected to make sure that it cannot be penetrated. He Stated this AR can easily be modified to include RVs. Governor Sandoval said that he understood the current policy on NDOC’s part is that if one of the inmates escaped and got access to an RV that the weapons are secure. Director Cox explained that we currently do not have anyone living on the grounds in an RV and they will look at the AR and have it updated regarding Mr. Mendez’s issues.

Governor Sandoval asked Deputy Director McDaniel when he anticipates that all the local approvals will be completed and NDOC will be able to have individuals reside in the RVs. Deputy Director McDaniel responded that Carlin Conservation Camp should be ready by 1 April; and as for Humboldt he cannot control the timing of the local County and City permits and approvals and that's what they are waiting on. He said as soon as they get the approvals they can complete installations and will be good to go. He estimates approximately another 30 days or so before this happens. Governor Sandoval summarized the discussion and asked Mr. Mendez if this satisfies his issues. Mr. Mendez replied that yes it does.

VII. Update and overview on Prison Rape Elimination Act (PREA) implementation and compliance – Pam del Porto, Inspector General and PREA coordinator for the Department of Corrections. IG Del Porto reminded everyone that at the last BOP meeting she discussed that three staff members attended PREA audit training in South Carolina in November. She explained that they were successful and completed the courses however the Department of Justice has not yet sent out their certification letters. Director Cox pointed out that one of the issues with the PREA Act is that although people are not receiving their certification, the compliance dates are still in place. He said it is a significant issue that they are required to have certified auditors to verify compliance by certain dates. Governor Sandoval agreed stating that we (NDOC and the State Of Nevada) are doing everything we are supposed to do pursuant to the law and we have attended the conference at a cost of between \$8000 and \$9000; and the law requires that we have certified auditors to have the first cycle completed by August 20, 2014, yet we can't do that because they haven't certified the very people who we need to accomplish that task. IG Del Porto agreed and said that includes the two out of three staff auditors that will be going to Colorado. A New Mexico auditor will be coming here as part of the 11 State consortium; the circular process so that States will not be in conflict.

Governor Sandoval asked if NDOC is going to move ahead and have staff do what they're supposed to do in compliance with the law and hope that the certification catches up with them. He Stated we should go ahead and do all the actions we are required to do regardless of the Federal Government not providing the certification. Director Cox said yes that is exactly the approach the Directors of the 11 State Consortium is taking. Director Cox said this was discussed at the last Director's conference and this (the Consortium) was put in place to save the taxpayers money. He mentioned that California is not part of the consortium. Director Cox also pointed out that there is still no PREA audit training available in the Western States. He has discussed this with the Western States Consortium and with their agreements has contacted the Federal Government and recommended they hold training here in Las Vegas as it would be a great financial savings for everyone rather than sending staff to the East Coast for the training. Governor Sandoval asked if Director Cox has contacted the Department of Justice regarding the certifications. Director Cox confirmed that he had and Stated currently they only have 130 to 140 auditors for the entire country. He said that between the States of California and Texas they have approximately 80 to 90 correctional facilities each, so just to audit those two States it would take almost all of the auditors that are currently in the entire country. Director Cox acknowledged that in the meantime the NDOC will continue to move forward towards compliance. IG Del Porto said that the three staff that were trained brought back a vast wealth of information that will assist them in gaining compliance. She explained that in fact, yesterday began a block of training for the compliance managers at each of the individual institutions under the direct supervision of the PREA managers and with the Wardens. She Stated that her staff are taking each of the 52 standards and the 233 sub standards and going through them line by line and giving specific instruction on them. The department was able to do this training and bring everyone together a one location via another grant from The Office Of Criminal Justice Assistance (OCAJ) this is a great example of the OCAJ coming to the assistance of the Department because NDOC does not have a lot of money for the travel and training including for PREA compliance. Director Cox Stated for the record, when the PREA proposal was originally made, there was a cost established but it was never incorporated into the funding from the Federal Government back to the State or the Department for doing these audits. This is an unfunded mandate.

IG Del Porto said that they have updated the frequently asked questions section on the PREA resource center website <http://www.prearesourcecenter.org/faq> and it deals with whether or not the InterState Corrections Compact is a contract. The biggest concern is that if it was a contract, it would affect whether or not the 11 States could go into a consortium as there cannot be a contract between agencies that will audit each other. The ruling on this is, as long as it is a bed for bed and not a monetary exchange, and as long as the inmates are consensual and volunteer to move to another State then there is no contract; so they can continue the Consortium. The other DOJ update dealt with language in one of the standards dealing with notification to outside licensing bodies and law enforcement agencies when one of their employees is under investigation and found to have engaged in a PREA violation. The clarification is that even if a State does not have a law specific to that PREA violation it is still against the law. So NDOC does need to make notifications to all outside licensing bodies and law enforcement agencies when one of their staff members quits while under investigation or is shown to have engaged in this behavior.

Director Cox added that IG Del Porto and our staff are working with smaller rural Counties and helping them with this process. She has reached out to a number of the Sheriff's in the State to offer assistance. Governor Sandoval asked notwithstanding the Federal Government's delay, where do we stand on compliance. IG Del Porto said based on what she has seen the cooperation between their multiple divisions and multiple staff members they are making great strides. IG Del Porto gave examples of what NDOC is doing to gain compliance. She brought up that the DOJ finally released their inmate education information and that they actually released it on YouTube first. She explained now that they have officially released it NDOC has made versions of it to distribute to the inmates. Director Cox pointed out that even this component shows the delay from the Federal Government in rolling out the education component for the inmate population. Governor Sandoval asked what the first important compliance date is. IG Del Porto said the first important date is May 15, 2014 for the Governors decision on what he will do. She said that in June they will go to Colorado, and New Mexico will come to Nevada to start their audits. Governor Sandoval thanked IG Del Porto and everyone involved at the Department of Corrections who worked on this complicated issue.

VIII. Update and Discussion on the Department of Corrections work with the Nevada Supreme Court's Juvenile Justice Commission – Greg Cox, Director; Director Cox explained that he was asked by the Governor to develop and work with the Commission on Statewide Juvenile Justice Reform and also Steve McBride from the Division of Child and Family Services (DCFS) on a process on how they would remove the under 18 and younger juvenile inmate population from NDOC facilities. Director Cox thanked Governor Sandoval for his leadership and his staff for their assistance because they had an enormous amount of communication with all the juvenile justice stakeholders.

Going back to PREA and looking at how NDOC supervises the under 18 population in facilities, there are some significant challenges. He Stated per the Governor's instructions they have been working diligently on a model to develop a cost-effective and efficient way to house these inmates. He explained that working with Justice Hardesty and others they have developed a shared service model of a co-locating facility which would work with DCFS, the juvenile service division. He discussed how they can reduce the cost to the taxpayers and that they already have State property located outside a secure perimeter in Carson City at the Northern Nevada Correctional Center (NNCC) which they can utilize. So the State already has the property which reduces the cost to the taxpayers. They looked at the design of the building and structures and how to provide for culinary services. He said they can bring the food over from NNCC. A culinary is a huge cost to designing and building a new structure, do this will save a considerable amount of money. They also looked at a more effective and efficient way so that they don't have to build a new warehouse because they have one at Northern Nevada Correctional Center. He Stated that one of the things that separates this model from other States is the shared services model, so there's no duplication of services that we currently do with our State's resources; in this case the NDOC resources and their staff which are in close proximity to where they believe this facility should be built. Director Cox said he appreciates the fact that he is on this Commission and working with them. He believes they will develop a plan for our State that will go into the future. This regional concept is called

the Missouri model and Louisiana has a similar model. He believes that juvenile justice stakeholders in our State think this is a step in the right direction. Governor Sandoval thanked Director Cox and said he knows a lot of people were involved including the Attorney General and AG staff, who worked very hard on this, as well as some of the Justices at the Supreme Court. He explained, the point is that Nevada has these 18 juveniles in the inmate population have to be segregated because of their age and this is a new method. These 18 individuals would be placed in this facility which would allow for more resources for them. Director Cox said this model would provide for continuum of care for their programming and educational services. Director Cox said he does not believe any other States have this shared service contract, continuum of care and shared services between facilities even though they may have co-located facilities. Governor Sandoval asked if it was more expensive to house these individuals than your typical inmate. Director Cox explained that intensive supervision of this group is required and they want to provide the programming and services to this population but first look at safety and security. With this Commission they are looking at how to provide a better level of care and services for this population. Governor Sandoval asked what the next step is. Director Cox said Justice Hardesty asked Director Cox that his staff help draft the CIP for submittal to the State Public Works Division. The draft has been sent out to all the stakeholders to review. He said they have the next meeting scheduled.

IX. Discussion/possible action regarding State Administrative Regulations - Greg Cox, Director Administrative Regulations were approved and can be found on the Nevada Department of Corrections website on the Administrative Regulations page:

http://doc.nv.gov/About/Administrative_Regulations/Administrative_Regulations/

X. Public Comment. There were no additional public comments. The office of Director Cox did receive written public comments from Mercedes Maharis. [Attachment 5](#)

XI. Adjournment.

APPROVED THIS 16th DAY, MONTH OF SEPTEMBER, 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