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Date: 7/26/2021 12:05 PM
Subject: Lethal Force option

Good afternoon,

My name is Waylon Brown a Senior Officer at HDSP and also union member of FOP. I have worked for NDOC for 6 and 1/2 years. Having a Lethal Force option is very critical for NDOC. We have had a uprise in staff assaults, murders and other incidents with inmates and using inmate made weapons. I know at HDSP officers are buying their own stab resistant vests to protect themselves. Having no lethal force option is dangerous for staff and inmates. We have seen that the 40mm less lethal option is not very effective during critical times. I know that Director Daniels has stated the we are going to use "technology and drones to keep staff and the community safe, " But none of that has happen. I know that myself and other officers have brought up the use of K9's for finding cell phones, drugs and to stop inmates from causing a disturbance. We have the opportunity to start a K9 program with out costing the state and residence any money. We would ask for donations from local casino's and do public events to rise money. This would also help with community bonding and explaining what we do as Corrections Officers and recruiting officers to join the NDOC family and keeping them.

Thank you

Jonathan R. Allen-Ricksecker

Correctional Officer HDSP

To: The Board of Prison Commissioners

Subject: Public Comment Related to Use of Force Discussion

Agenda Date: July 27th, 2021

On or around May 24th, 2016 the Nevada Department of Corrections (NDOC) at the direction of former Governor Brian Sandoval intentionally, willfully, and negligently removed strategically placed firearms and deterrents from all the correctional facilities inner perimeter protective post and replaced them almost exclusively with the 40 mm less lethal launchers and a limited amount of munitions with limited applications, while other post remain to date unequipped. The removal of the suitable firearms and appropriate munitions eliminated the ability and options of the protective post as built and designed to lawfully and appropriately respond to and utilize the higher levels of the Use of Force Continuum including the potential application of justifiable lethal force when necessary for self defense or the defense of others and or to render aid and safeguard correctional staff, volunteers, visitors, vendors, contractors, and inmates. The elimination of practical firearms as utilized as a historically standard correctional tool within the industry as both "protective equipment" and a "safety device" within the correctional setting has created significantly dangerous working conditions for staff and living conditions for offenders. The inmate population is well aware of this fact and have exploited and monopolized upon it. Recently on two occasions both occurring at Ely State Prison members of the Security Threat Groups (STG's) a.k.a. criminal prison gang members with murder in their hearts and on their minds contrived a counter to and successfully defeated the 40 mm less lethal launcher option, the only available options to staff at that time, that were and are ultimately entirely unsuitable and ineffective to resolve this type of specific threat, during two well organized inmate on inmate felonious assault and batteries, a.k.a. unsuccessful murders consisting of multiple stabs, punches, and kicks, that occurred when the numerically superior inmate population formed a human barrier around the assailant(s) and victim(s), and between staff in order to entrap the prey and ward off and circumvent

responding staff and security response measures including the potential of deploying additional 40 mm launchers. Peace Officers were relegated to spectators and eyewitnesses, but could have just as easily been counted as additional victims. Several Prisons have been locked down due to inmates openly speaking about and conspiring to attempt to kill a staff member, any staff member. "Prisons maybe inherently dangerous workplaces, but the employer is still required to take every reasonable precaution to protect corrections officers and other correctional staff against safety and health hazards including assault," (OSHA).

On March 4th, 2021 the EMC heard grievances related to the lack of effective use of force options and equipment and unanimously agreed by resolving that the EMC advice the Governor of the need for the NDOC to complete an independent study on the use of force and available tools within the NDOC. The EMC recommended the NDOC place the topic on the Board of Prison Commissioners agenda. The issue is ripe for discussion.

The Federal Occupational Safety and Health Act (OHSA) 1970 requires and states, "employers are responsible for providing safe and healthful workplaces for their employees." OSHA has no specific standard on workplace violence, however OSHA does state "workers have a right to a safe workplace." OHSA law does not cover state and local government employees necessarily due to "state sovereignty" rights, however, states such as Nevada have opted, run their own state OHSA programs that are approved by OSHA. The Nevada OSHA program is contained within N.R.S. Chapter 618 titled Occupational Health and Safety as a whole and additionally specifically NRS 618.295 (8) which adopts federal safety and health standards and regulations, and enforcement measures. NRS 618.195 mandates state agencies to "establish and maintain effective and comprehensive occupational safety and health programs consistent with" NRS Chapter 618. NRS 618.375 titled "Duties of Employers" states, "Every employer shall: 1. Furnish employment and a place of employment which are free from recognized hazards that are causing or are likely to cause death or serious physical harm to his or her employee. 2. Furnish and use safety devices and safeguards, and adopt and use such practices, means, methods, operations and processes as are reasonably adequate to render such employment and places of employment safe and comply with all orders issued by the division." NRS 618.165 titled "safety device" or "safeguards" defined states "Safety device" or "safeguard" means any practical method of mitigating or preventing a specific danger."

OHSA has a series of applicable news releases concerning enforcement actions for inadequate workplace violence and prevention plans cases such as *Mississippi Correctional Facility*, *Corizon Health Inc. at Rikers*,

Brookdale University Hospital and Medical Center, and the *GEO Group* who operate several Correctional Institutions within the U.S. In the *Mississippi Correctional Facility* matter OSHA said, "This employer knowingly put workers at risk of injury or death by failing to implement well-recognized measures that would protect employee from physical assaults by inmates." This included one willful violation" for exposing employees to workplace violence and failing to take adequate measures to reduce the risk of violence." *Cirizon* was cited for "failing to develop and implement an effective workplace violence and prevention program for its employees at Rikers." because "*Corizon* was aware of the workplace violence incidents....yet the issue has not been addressed sufficiently." In *Brookdale University Hospital and Medical Center* the "Employer failed to protect employees adequately against workplace violence." Brookdale management was aware of these incidents and did not take effective measures to prevent assaults against its employees." These incidents involved employees who were threatened or physically and verbally assaulted by patients and visitors. Brookdale was cited "for failing to develop and implement adequate measures to reduce or eliminate the likelihood of physical violence and assaults against employees..." The GEO Group failed to develop "...comprehensive procedures and policies to better safeguard its workers against the hazards of workplace violence in every correctional and adult detention facilities that it manages." OSHA states, "A serious violation occurs when there is a substantial probability that death or serious physical harm could result from a hazard about which the employer knew or should have known." OSHA states, "A Willful violation is one committed with intentional knowing or voluntary disregard for the law's requirements, or with plain indifference to worker safety and health."

The Nevada Department of Corrections, a non-exempt State entity and employer whom is governed and subject under the requirement of the Nevada OSHA statutes in NRS Chapter 618 and the Federal OSHA requirements as codified and adopted by the State, and established national, state, and industry standards; including the "Duties of Employers" (NRS 618.375) to 1. Furnish employment and a place of employment which are free from recognized hazards that are causing or are likely to cause death or serious physical harm to his or her employee. 2. Furnish and use safety devices and safeguards, and adopt and use such practices, means, methods, operations and processes as are reasonably adequate to render such employment and places of employment safe and comply with all orders issued by the division is similarly required by the Federal OSHA to abide by and ensure Nevada public employee

“ workers have a right to a safe workplace” and that the state departments and agencies as “employers are responsible for providing safe and healthful workplaces for their employees”

The NDOC breached their “duty” as an employer (NRS 618.375) and violated Federal and Nevada OSHA Laws when the NDOC knowingly, intentionally, willfully, and negligently removed effective vital “safety devices”(NRS 618.165) and security deterrent equipment from the inner perimeter protective post and failed to provide adequate effective replacement safety equipment capable of mitigating inevitable and foreseeable workplace hazards and violence including but not limited to violent inmate on staff assaults and batteries, and failed to”... establish and maintain an effective and comprehensive occupational safety program consistent with the objectives with the provisions promulgated...” in NRS Chapter 618 and failed to “...provide their employees with conditions of employment consistent with the objectives of this chapter...” meaning Chapter 618, “...and comply with standards developed under NRS 618.295) and other national standards and industry standards (NRS 618.125).” Every OSHA applicable news releases citation , opinion, and quotation concerning enforcement actions for inadequate workplace violence and prevention plans cases such as occurred and referenced above in the *Mississippi Correctional Facility, Corizon Health Inc. at Rikers, Brookdale University Hospital and Medical Center, and the GEO Group* cited above in this matter are applicable to the NDOC as either a working conditions, failure to act, a failure to develop, implement, and maintain an effective and comprehensive safety program, a failure furnish adequate effective safety equipment, or just plain deliberate indifference and disregard for the applicable law and human life. No police or correctional agency can routinely meet deadly encounters and situations, some involving prison made weapons, with only less lethal force options and expect to always prevail or live through the encounter. NDOC Staff attrition rates are among some of the highest comparatively, and conditions of employment and the institutional working conditions are definitely a factor

The Proposed Resolution remedy would consist of the re-installation and re-equipping with suitable safety devices and protective equipment to include firearms and munitions the inner perimeter protective post. I request that the Board of Prison Commissioners intervene to the extent of their conscious and authorized state statutes and codes permit, including the consideration of initiating a Climate Study or consulting with a recent Climate Study if deemed applicable and appropriate

On behalf of myself and my fellow correctional officers, I thank you for your time and consideration regarding this matter

Sincerely;

Jonathan R. Allen-Ricksecker.

BOPC July 27th, 2021 Meeting

My name is Paul Lunkwitz, I was a Correctional Officer at High Desert State Prison. I was a correctional officer with the Nevada Department of Corrections since June 5, 2000. I am also the President of Nevada C.O. Lodge 21 of the Fraternal Order of Police. In all my years of experience as an officer and in my 13 years of representing officers in various capacities, I can tell you that there has never been a more critical issue than the one we are here to discuss today. The highly contested removal of the potentially lethal firearms from protective posts inside our institutions back in 2016 caused an evolution within the Nevada Department of Corrections. Officers have evolved to rely solely on less lethal options in the performance of their duties. While access to **additional** less lethal options was a responsible decision, the removal of a lethal force option was **negligent** and in **disregard** to the mission of the NDOC.

I established at the EMC hearing that inmates have defeated and fought through every single less lethal option that we have available in the NDOC currently. After outlining the conditions under which we are asked to work under, and discussing the various violent attacks on officers and inmates, The EMC granted my grievance after a unanimous vote. The **NDOC is failing its Officers, Inmates, and the Public.** I will ask all of you on the BOPC the same question I asked the EMC: “Would any of you on the BOPC feel comfortable sending 10 officers with no stab vests, helmets, shields, tasers or **lethal force option** to work a housing unit that houses 336 inmates over a mile away from the operations building? No? How about 4? Thats right ladies and gentlemen, on dayshift units 9 through 12 are staffed with 4 officers per unit. Over a mile away from the operations building, no stab vests, no tasers, no shields, no helmets, and **no lethal force option!**”

Our use of force training teaches us that there are 6 levels of force. #1 officer presence, #2 verbal commands, #3 restraints, #4 chemical agents, #5 incapacitation tools, and #6 deadly or lethal force. With no lethal force option available to the officers in these positions, we are not talking about if an officer will ever be murdered, but when an officer will be murdered. Inmates have already attempted to and murdered inmates. Inmates have also expressed their own concern regarding our ability to protect them from other inmates. This is a life or death issue we are here to discuss today.

I cannot be certain what Deputy Director Williams intends on discussing during the appropriate time on the agenda. I know I did have a conversation with him regarding this grievance after I spoke up at the previous April BOPC meeting. He expressed to me that Christina Leathers was at fault for not keeping the Directors in the loop. If she should offer any input to this proceeding, I would suggest her lack of experience and naivety be taken into consideration. She made several false claims and used derogatory language(kill inmates) during her incompetent representation at the EMC Hearing in March 2021. D.D. Williams further intimated that the administration is on my side in equipping the appropriate gun posts with a lethal force option. I am quite sure that his remarks today will be far more politically muted.

The bottom line is you wouldn't ask a police officer to work the streets with only less lethal tools. You wouldn't ask a soldier to go to war with less lethal tools. We as officers are being asked to work in an environment where the inmates we are responsible to protect are scared for their lives, but those we oppose are equipped with lethal weapons. We are being asked to uphold this NDOC mission without the realistic lethal force platform that we need.

I am well aware that the order to remove lethal firearms and birdshot from our protective gun posts came from the former governor of Nevada. If Governor Sisolak needs to change this directive, then so be it. If this vital safety issue continues on unchanged, and this BOPC, NDOC administrators, the attorney generals office, and the NDOC Director do not make every effort to fix this issue, you will all bear this liability. One day you will hear the news that an officer, staff member, vendor, visitor, or inmate was murdered due to the lack of a lethal force option at our institutions. This burden will fall on everyone who had a chance to prevent this from happening. I humbly ask that after reviewing the evidence and exhibits from my EMC hearing, and hearing the comments submitted today, you vote to equip all staff with protective stab vests and that every single secure protective post throughout the NDOC be equipped with mini-14 rifles or similar firearm, as well as **effective less lethal** firearms and ammunition. Thank you for your careful consideration.

Paul Lunkwitz
President
FOP Nevada C.O. Lodge 21



**STATE OF NEVADA
EMPLOYEE-MANAGEMENT COMMITTEE**

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Meeting Minutes of the Employee-Management Committee

Date: March 04, 2021

(Subject to Committee Approval)

Pursuant to Governor Sisolak's Declaration of Emergency Directives 026 and 029, requirement contained in NRS 241.023(1)(b) that there be a physical location designated for meetings of public bodies where members of the public are permitted to attend and participate, is suspended in order to mitigate the possible exposure or transmission of COVID-19 (Coronavirus). All meetings are held on MS Teams, and recorded.

Committee Members:

Management Representatives

Present

Ms. Pauline Beigel-Chair	X
Ms. Jennifer Bauer	X

Employee Representatives

Mr. Tracy DuPree	
Ms. Turessa Russell	X
Ms. Sherri Thompson	X
Ms. Stephanie Parker-Co Vice Chair	
Mr. Gwyn Davies-Co Vice Chair	

Staff Present:

Mr. Robert Whitney, EMC Counsel, Deputy Attorney General
Ms. Breece Flores, EMC Coordinator
Ms. Ivory Wright, EMC Hearing Clerk

1. Call to Order

Chair Beigel called the meeting to order at approximately 9:02 am.

2. Public Comment

There were no comments from the audience or Committee Members.

3. Committee introductions and meeting overview and/or update - For discussion only.

Chair Beigel opened the meeting with Committee introductions.

4. Adoption of the Agenda – Action Item

Chair Beigel requested a motion to adopt the agenda.

MOTION: To adopt the agenda.

BY: Member Thompson

SECOND: Member Russell

VOTE: The vote was unanimous in favor of the motion.

Chair Beigel states she would like to start with Agenda item #6.

Chair Beigel asks who is present for the Grievance #6750 for Ryan Wahl.

Christina Leathers stated she was present and representing NDOC in this Grievance.

Chair Beigel asked EMC Coordinator Ms. Flores if any communication has come from Mr. Wahl that he would not be participating.

Ms. Flores replies, no communication has been received by phone or email, also no exhibit packets were submitted.

Chair Beigel asks Dag Robert Whitney if a motion to dismiss can be submitted orally or did they have the Agency submit a motion to dismiss letter.

Mr. Whitney responded yes, a motion to dismiss can be made orally in this case.

Christina Leathers states she would like to ask for a motion to dismiss grievance #6750 as Mr. Ryan Wahl terminated his employment with NDOC on 08/24/2020, so it is possible that is why he is not present. She verified it in her system that he was no longer employed.

5. Discussion and possible action related to Grievance of Ryan Wahl #6750, Department of Corrections – Action Item

Chair Beigel asks Christina Leathers if she can present the case to the EMC to dismiss the grievance #6750 for Ryan Wahl.

Christina Leathers stated it was her understanding that grievance #6750, as presented by former Senior Officer Wahl was related to shift bidding.

Christina Leathers stated Mr. Wahl was temporarily removed from his post as a result of a pending investigation; however, he was returned to his post. The grievance did go through all 4 steps, but the officer was returned to his post he had been on as the investigation was unfounded.

Chair Beigel asked Christina Leathers if she was asking for a motion to dismiss.

Christina Leathers responded yes, due to the fact the employee is now terminated, and the grievant was returned to his post as originally mentioned in the grievance. She stated she was asking the EMC to dismiss this grievance.

Chair Beigel asks the committee to discuss.

Member Thompson agreed if he was no longer employed and is not there today, she agreed this grievance should be dismissed.

Member Russell stated she agreed with Member Thompson.

Member Bauer stated she agreed.

Chair Beigel stated Ms. Leather's motion to dismiss grievance #6750 for Ryan Wahl since the employee has been terminated and did not show up for the grievance hearing.

Chair Beigel confirmed the motion with Mr. Whitney.

Mr. Whitney stated it was appropriate.

Member Bauer asked if the committee was clear the employee was terminated.

Chair Beigel stated that Ms. Leathers stated in her earlier testimony that the last day of employment was 08/24/2020.

Member Bauer asked for clarification to Chair Beigel if they were sure he was terminated

Chair Beigel stated yes that is what was testified by Christina Leathers, she had confirmed by looking it up in her computer.

Member Bauer stated Ms. Leathers verified he is no longer employed with NDOC and did confirm with Mr. Whitney if she needed to state he was terminated in the motion.

Chair Beigel stated it was not relevant, it was testified he was no longer a State Employee, not the reason why he was no longer employed.

Member Bauer agreed with Chair Beigel and was ready to make the motion. She asked instead of saying the employee was terminated, could she say the employee is no longer employed with the NDOC and did not show up to present for the grievance.

Chair Beigel stated if Member Bauer had a motion to present it.

Member Bauer stated she was just making a friendly amendment to the motion to be clear if him being terminated would be in the motion was her concern.

Ms. Leathers stated to the employee did resign from the agency and the reasoning was a better paying job. She confirmed he was no longer a State Employee as of 8/24/2020. He had resigned on his own accord.

Member Bauer stated the friendly amendment to the motion to grant the motion to dismiss for grievance #6750 Ryan Wahl, since he was no longer employed with the State of Nevada Department of Corrections.

Member Thompson seconded the motion.

Chair Beigel stated the vote was unanimous in favor of the motion.

MOTION: Moved to grant motion to dismiss
BY: Chair Beigel
SECOND: Member Thompson
VOTE: The vote was unanimous in favor of the motion.

6. Discussion and possible action related to Grievance of Keith McKeehan #6847, Department of Corrections – Action Item

This matter came on for hearing before the Employee-Management Committee on March 4, 2021 pursuant to NAC 284.695 and NAC 284.6955, regarding Grievance No. 6847, filed by State of Nevada, Department of Corrections Lieutenant Keith McKeehan. The Grievant's hearing was held simultaneously with the hearing for Grievance No. 6856, In re: Grievance of Paul Lunkwitz. Grievant was in proper person.

The agency-employer, the State of Nevada, Department of Corrections was represented by Personnel Officer III Christina Leathers.

Grievant, Officer Allen-Ricksecker, Officer Lunkwitz, Sergeant Taerik Berry and Senior Correctional Officer Robert Ashcraft were sworn in and testified at the hearing. There were no objections to the exhibits.

Officer Lunkwitz stated that quite a few states across the county had OSHA issues with protecting their employees, and that prisons were no exception.

Officer Lunkwitz stated that the officers knew when they started that prisons were dangerous.

Officer Lunkwitz indicated that the bottom line of their grievances was that birdshot pellets did not incapacitate inmates and helped stop violent incidents from taking place, and although the birdshot may not have stopped all violent incidents it stopped many more than the 40 mm launchers stopped.

Officer Lunkwitz stated the primary issue was not lack of tools, but that the officers did not have the tools that were in line with use of force regulations. If one read through AR 405, there was a clearly outlined section on lethal force. That section dealt with the prevention of the loss of life, whether of staff or inmates.

Officer Lunkwitz stated that the launchers NDOC had did not provide the capability to use lethal force when necessary.

Officer Lunkwitz stated an example of the incident that occurred in Ely, NV, where he stated in substance the 40 mm rounds were ineffective.

Officer Lunkwitz stated in substance that violent incidents had only grown in number since the Ely incident in the fall of 2019.

Officer Lunkwitz referenced an incident where an officer was stabbed in the staff office at High Desert State Prison and stated that previously constructed grates at the unit control room where the officer with the launcher was stationed prevented the use of the 40 mm, as those grates were too small for the 40 mm launcher to fire down into the staff office, so when the officer was stabbed the control officer was rendered meaningless. This same situation applied to the sally port, where the grates did not allow for the 40 mm launchers to be deployed down into those areas.

Officer Lunkwitz stated that if NDOC did not go back to the shotguns they needed a lethal force option available across the state.

Lieutenant McKeehan stated from a supervisory standpoint he was charged with maintaining the safety of staff at his institution, and so he needed to provide the tools so that staff could maintain their safety.

Lieutenant McKeehan stated that this past January they had two officers who were assaulted simultaneously, and the control officer fired the 40 mm launcher several times, and it did not stop the inmates from assaulting the officers, and that the incident did not stop until responding officers arrived and put themselves into harm's way, which to Lieutenant McKeehan was unacceptable.

Ms. Leathers stated that NDOC needed to obey the order provided by the Governor's Office in 2016, and the agency could provide what protocols had been implemented.

Ms. Leathers stated NDOC had implemented access to many less lethal tools when force was required to be used, such as an ASP baton, large MK 9, small MK 4, tasers, pepper spray and the high velocity 40 MM rounds, and multiple 40 mm launchers with a 6 round capacity. NDOC has also trained officers on each of these tools.

Ms. Leathers stated that all institutional use of force incidents were reviewed at the institutional level and included all staff involved, which involved transparency, and helped officers understand the process while holding them accountable and allowing staff to make suggestions on relevant issues.

Ms. Leathers stated that NDOC had revised outdated policies and instituted new policies, some for the betterment of the agencies.

Ms. Leathers stated that AR 405 was currently under review, which was NDOC's use of force policy.

Ms. Leather stated that all around the nation the use of force policies had come under great scrutiny, so NDOC was taking the time to make a thorough and accurate review of AR 405 to ensure that it met the requirements of the country as it related to the use of force and modern day corrections.

Ms. Leathers stated that with respect to one of the incidents referenced by Lieutenant McKeehan, protocol was not properly followed, and the inmates had been improperly released from their cells without proper custody being available to assist.

Ms. Leathers stated that with Director Daniels coming on board, and his experience in corrections, NDOC had performed training at their facilities from the executive team down to the senior correctional officers on incident response techniques and less lethal options in dealing with inmate incidents.

Officer Lunkwitz called Officer Allen-Ricksecker as a witness to question.

Officer Allen-Ricksecker testified that he was assigned to HDSP and had worked there since August 7, 2000. He stated that he was aware of the multiple incidents at Ely and had watched the footage of those incidents.

Officer Allen-Ricksecker described the incident as the inmates forming a wall to defeat the officers' less lethal options.

Ms. Leathers objected to the testimony based on the fact that the EMC was a public meeting, and she was unsure if the information being shared was public and for others outside of NDOC to be aware of, and did not know if it was relevant to what was occurring in the present grievance.

Officer Lunkwitz responded that they were not using any names.

Ms. Leathers clarified and stated regardless of whether any names were being shared internal operations were being shared and information about the assault may not have been public information.

Officer Lunkwitz stated that the incident in Ely took place just prior to the grievance being filed, and that was the impetus of what led to his grievance, and the incident was described in the grievance.

Officer Lunkwitz stated that the timeliness issue was relevant, as the Ely incident prompted the grievance, as the issue was the ineffectiveness of the 40 mm rounds and how the Ely incident illustrated that ineffectiveness.

Officer Lunkwitz stated that he was not divulging any confidential information, and that is was discussion of an incident that they were all aware of without specifics.

Ms. Leathers withdrew the objection but stated that the way she understood the grievance process a grievant needed to file a grievance for themselves. Here the individuals who filed the grievances, Officer Lunkwitz and Lieutenant McKeehan, were not directly involved in the Ely incident, and so Ms. Leathers stated her concern that the grievances were not specific to Officer Lunkwitz and Lieutenant McKeehan, but to NDOC's custody staff overall.

Officer Allen-Ricksecker stated that during the Ely incident inmates were struck with 40 MM launcher rounds and that the barrier between the inmate being assaulted and correctional staff remained in effect.

Ms. Leathers objected, she stated that the particular incident that was being testified to be an active criminal case. It was unclear how, if at all, the testimony would impede any investigation.

Chair Beigel stated that even though the incident occurred at Ely and the Grievants did not work at Ely and the Grievants were citing working conditions in their grievances, and so if everyone's guns were taken away the Ely incident was relevant in her mind. This objection was overruled.

Officer Allen-Ricksecker testified that it appeared the ultimate reason the inmate in the Ely incident stopped the assault was because he simply tired. At HDSP, in the control room there were grates over the staff office and sally port, and the grates were constructed with the idea of shotguns and revolvers in mind.

Officer Allen-Ricksecker stated that it was impossible to deploy the 40 mm rounds down into the office or sally port, as the size of the barrel, the round and the spacing in the grating prevented this. He noted that with respect to the assault that occurred in the staff office, it was impossible for the control room officer to aid, other than radioing for assistance and being a witness.

Officer Allen-Ricksecker also stated other incidents where the 40 mm was ineffective in quelling disturbances at HDSP, and that there were areas of HDSP the launchers could not reach, and that there were isolated areas all over HDSP, and that the sheer size of HDSP prevented a rapid response to a scene, so the parties involved might have to fend for themselves for several minutes before a response arrived.

Officer Allen-Ricksecker stated that there were large distances to be covered, and that carts had limited range. Even if there was a timely response, the responding officers would be bringing the same tools that the officers on site would have, which was less than lethal force, and so the situation could be one where less than lethal force would be up against lethal force of inmates. He noted that the SN 303's were not placed in the security posts where most of the officers worked on a daily basis.

Officer Allen-Ricksecker, in response to cross-examination questions, stated that he had been assigned from time to time to search and escort, and it had been years since he had been permanently assigned to the position.

Officer Allen-Ricksecker stated that he was familiar with search and escort duties and had written several procedures at HDSP, had been there for nearly 21 years and had worked in all the positions there over time, and had trained officers working in different positions.

Officer Allen-Ricksecker stated that he was aware of an Emergency Response Management Committee that was formed within NDOC, and that he had submitted written comments in response to emergency management many times.

Officer Lunkwitz objected to Ms. Leathers' line of questioning, for relevance.

Ms. Leathers responded that she was trying to show that while the grievants were indicating that working conditions had changed she was trying to show NDOC was making adjustments to working conditions to make sure they were safe for not only employees but inmates, as there was a constitutional requirement that inmate conditions be safe and humane, and was trying to show whether grievants' information was current or outdated.

Chair Beigel stated the objection was overruled.

Officer Allen-Ricksecker stated that he had submitted countless suggestions and requests to improve operating and working conditions at HDSP and found it offensive that someone would suggest that re-introducing lethal options at HDSP would be inhumane.

Officer Allen-Ricksecker stated that with respect to officers receiving additional training, and less lethal tools, he saw no noticeable or measurable difference in training after the removal in 2016 of shotguns, and that the less lethal tools were not installed prior to the removal of the shotguns.

Member Russell asked Officer Allen-Ricksecker how the OC spray would compare to police officer issued pepper spray.

Officer Allen-Ricksecker responded the spray was identical.

Sergeant Berry stated that he was a sergeant with the training division within NDOC and had worked for NDOC for 20 years; he was also a range-master and had been one for 15 years.

Sergeant Berry stated that he was familiar with the incident that occurred at Ely, and had seen the film footage, and agreed that the 40 mm launcher had been defeated in that instance.

Sergeant Berry stated in substance that the 40 mm rounds currently in use were mostly the rubber impact rounds, which were designed to prevent an inmate from continuing their violent acts; additionally, an OC round was used, which turned into a powder on impact and created dust like particles to irritate the inmate, and was similar to OC spray its effects.

Sergeant Berry testified that whether there were more effective rounds with the launcher system, there were higher velocity rounds, and he testified that in his experience whether or not the launcher could stop a violent attack was contingent on how far away the inmate was, but was aware of many incidents where the 40 mm launcher was ineffective in stopping inmate attacks, whether against officers or other inmates.

Sergeant Berry testified that there were less lethal rounds than birdshot in the 12-gauge delivery system, including bean bags, rubber pellets and rubber blocks.

Sergeant Berry stated that there were other lethal options at HDSP, including a Glock 22 handgun and a Ruger mini 14. He stated that with respect to the shotgun being able to fire lethal and less lethal ammunition, it had to be clear that any shotgun that fired less lethal rounds had to be color coded so only less lethal ammunition went into it.

Sergeant Berry testified that currently there was no lethal force option at HDSP, and that less lethal tools needed to be supported by a lethal option, as was standard for law enforcement across the country. He stated due to the size of HDSP and delayed response times according to HDSP needed a lethal force option in every unit at HDSP, and working conditions were not as safe as they could be without the lethal force option.

Sergeant Berry stated that when NDOC transportation drove the bus transporting inmates those officers carried handguns, pepper balls, rifles, batons, tasers and OC, and that these tools were available to protect inmates from inmates, staff, and the public from inmates.

Sergeant Berry clarified that the 40 mm shot a rubber sponger round.

Sergeant Berry was asked if it was his job to kill inmates.

Ms. Leathers objected to Sergeant Berry's statement.

Ms. Leathers stated that the removal of the shotguns followed an incident at HDSP where officers shot an inmate with the shotgun, resulting in death.

Chair Beigel stated the objection was sustained.

Sergeant Berry stated that it was the job of the officers to protect both staff and inmates, and that it was not common for officers to use lethal force. He stated that the 40 mm was doing its job but was unable to accomplish every job for stopping threats, and the officers were limited by it, as it was the only tool the officers had to stop violent incidents.

Sergeant Berry stated that he felt the shotgun should be coupled with other less lethal options, as there was no one weapon that would solve all issues. He felt that lethal tools should not be the first option in stopping violent incidents, and should be the last option, but if the lethal option was unavailable that was creating an unsafe environment.

Sergeant Berry stated the Glock 40 was available at HDSP, but only inside the armories, and not inside the units where the inmates were kept.

Sergeant Berry stated that he was aware of Immediate Response training and thought that it should be added to the lethal [training].

Sergeant Berry stated that he looked into Arizona, California, Florida and Schenectady, NY and found that multiple agencies used shotguns with less lethal rounds; inside some housing units, and rifles with frangible ammunition were used.

Sergeant Berry there was no perfect option.

Sergeant Berry stated that he also instructed officers on the use of force and deadly force. Officers were authorized to use deadly force when another life was at immediate risk of being taken or their own life was at immediate risk of being taken, and that the officers would have been justified in using deadly force during the Ely incident with the intent of stopping the inmate.

Sergeant Berry stated that HDSP had lethal options available, but the distance and the proximity of the lethal weapons the officers had in relationship to an incident that could occur in a unit was too far, as there were no longer any lethal options in the housing units, as the lethal options were in the armory or in a designated tower.

Sergeant Berry stated that the Glock handgun and mini 14 were generally deployed for transportation runs, assigned to a tower, or used to reacquire an escaped inmate. If a lethal force option needed to be moved the lethal tool was problematic.

Sergeant Berry stated that to bring a weapon across the yard the officer would have to ensure there were no inmates on the yard, meaning the institution had to be locked down and that there was a clear path to the incident. He stated a significant amount of time might elapse before the lethal force option could be deployed where it was needed, and that it was likely a loss of life would result.

Sergeant Berry stated that with respect to housing units, the maximum distance a weapon could be used would be 35-40 yards; outside, in the small yards, the distance could be up to 70 yards. The effective range of the rounds for the 40 mm launchers, was 80'.

Officer Ashcraft testified that he had worked for NDOC for 21 and a half years, and had worked at multiple institutions, including HDSP, for 18 years.

Officer Ashcraft stated, with respect to the 912 Quad, there was approximately 100 yards between Unit 12 and Unit 10, straight across. If there was an incident, the 40 mm round would be ineffective when used on an inmate with an adrenaline flow going. The gun posts at the 912 Quad were 20-30' above the ground, so that unless an incident took place directly below a gun post, the 40 mm would be ineffective in stopping any incident.

Officer Ashcraft stated that the control officer could not deploy the 40 mm down into the sally port, although there were no grates to allow even a shotgun to shoot into the sally port.

Officer Ashcraft further stated that he did not have direct knowledge on the 40 mm launchers being ineffective, but had seen on video multiple instances happen where the launches had been ineffective due to inmate adrenaline flow, and that the 40 mm did not have a large impact in stopping incidents. He stated that if all nonlethal force failed to stop an incident lethal force would be needed, and lethal force was needed to support nonlethal force in the event non-lethal force failed.

Officer Ashcraft stated lethal force was not an option, which affected the safety and security of officers and inmates alike.

Officer Ashcraft stated that he was taught to use deadly force if the inmate or the officer were in a position where they could not defend themselves, and life was in imminent jeopardy.

Officer Lunkwitz testified that the shotguns had an effective range of, with birdshot, 80-100 yards, with buckshot 70 yards, and slugs 120 yards.

Ms. Leathers stated the shotgun had an effective range of 38 yards with buckshot, 49 yards with birdshot, and 110 yards with slugs.

Lieutenant McKeehan stated that in his experience when the 40 mm was used it would leave a bruise or contusion on the person hit by the projectile, and it did not stop the aggression. At Ely, the option of deadly force was unavailable for the officers to do their due diligence in protecting the inmate being assaulted.

Lieutenant McKeehan stated another incident started by the officers telling inmates to lock up, and the inmates refused orders to lock up, and the incident had nothing to do with staff error, as the officers did not break protocol or policy.

Lieutenant McKeehan stated that he was unaware of lethal force devices being brought onto the yard by staff as a result of any inmate incidents in his 13 and a half years with NDOC, and that it would be problematic for staff to do so in a timely manner.

Lieutenant McKeehan stated he believed there needed to be a lethal force option to back up the less lethal force options at HDSP, and noted that not only would staff need to get lethal force from the armory at HDSP, there would be a need for staff to escort staff with the lethal force, a need to ensure the yard was locked down, and that in some cases it would take 10 minutes to get to certain places at HDSP, so that it would be about 15 minutes before the lethal force option could be deployed.

Lieutenant McKeehan stated that the incidents described earlier in the grievance only lasted a few minutes, and that the time it would take to respond with lethal weapons from the armory would be inadequate to respond to an immediate threat.

Lieutenant McKeehan stated that with respect to the stabbing at HDSP the proper protocol had been followed by staff, as it was a general population housing unit.

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Officer Lunkwitz stated there were several NRS' in his packet, that these laws applied, and that officers had a responsibility to inmates and staff, and without the necessary tools the responsibilities could not be accomplished, and that a lethal force platform was necessary in each unit to support the other nonlethal tools.

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Ms. Leathers stated that with the new NDOC Director NDOC has put out training to address incident response use of force and had put out use of force manuals at NDOC institutions.

Ms. Leathers stated that the Emergency Response Committee has met on at least two occasions to go over each institution's emergency response manuals.

Ms. Leathers stated NDOC was not ignoring the need for adequate force at its facilities, it was simply looking at handling matters differently as a modern day correctional facility, and that NDOC was 20-30 years behind, and needed to be brought up to date on how issues were handled.

Chair Beigel began the deliberations.

Member Bauer asked Officer Lunkwitz about suggestions toward emergency response improvement and whether he had received communication regarding the consideration and application of those suggestions.

Officer Lunkwitz responded that he had not but clarified that the officers had received general feedback.

Lieutenant McKeehan stated he was aware of officers who made suggestions to the NDOC administration, and from there they needed to wait to see if the suggestions would be implemented by a change of policy.

Member Bauer asked Officer Lunkwitz if the issues had been addressed through public comment at a Board of State Prison Commissioners meeting.

Officer Lunkwitz responded, “not to my knowledge. . . .”

Lieutenant McKeehan stated he did not know if the issue had been addressed at Board of State Prison Commissioners meeting.

Member Bauer asked Ms. Leathers if NDOC had disseminated communication regarding the application of the suggestions by officers concerning safety to the board.

Ms. Leathers was unaware of where the suggestions by grievants were submitted and had not seen any suggestions come through the NDOC Director’s Office recently. She stated that the issue had not been on an agenda for discussion at a Board of State Prison Commissioners meeting under the new administration.

Ms. Leathers stated that the NDOC Director’s Office prepared the agenda for the Board of State Prison Commissioners meeting, presented it to the Governor, who has the final decision on what was in the meeting agenda.

Ms. Leathers added that she could recommend that the issue be a topic of discussion at a Board of State Prison Commissioners meeting.

Member Russell stated that she was deeply troubled by all of the information presented, and was inclined to grant the grievance, but due to Governor Sandoval’s directive there was no ability to override that directive.

Member Russell stated that she was struggling for a remedy, and that NDOC stating it was 20-30 years behind where it should be was concerning to her.

Member Russell stated she thought that the Board of State Prison Commissioners and the Governor should be made aware of the information presented in the hearing.

Member Thompson stated she agreed that the information was concerning, and agreed the matter needed to be moved forward, but that the EMC had no authority to do anything else.

Member Bauer stated that she agreed with the comments, and credited the grievants for understanding the EMC's remedies were limited, but thought that the EMC had jurisdictional authority to advise the Governor that the subject of the grievances involved serious issues that needed to be addressed in a more public manner, so that NDOC employees were aware of what was being considered and actions taken.

Member Bauer stated that she was inclined to grant the grievance in that the EMC advise the Governor and recommend NDOC conduct an independent study, and that such a study be conducted by subject matter experts on the best practices implemented by corrections institutions nationwide and on the best practices on the use of less than lethal and lethal force.

Chair Beigel stated that she liked the idea of having, if the grievances were granted, in the response that the subject matter needed to be put on an agenda of the Board of State Prison Commissioners meeting, if not in April 2021 then the one in May.

Ms. Leathers added that NDOC was requesting a staffing study as part of the 2022-23 biennium budget, and it was part of the Governor's recommended budget. She stated the staffing study could include whether tools NDOC was using were effective.

Officer Lunkwitz stated that any study should be independent of NDOC personnel.

Member Russell stated that she agreed with an independent study and that it would probably pull more weight and be more effective than anything done internally by State of Nevada staff.

Ms. Leathers added that the staffing study she had referred to earlier would be a study performed by an outside entity independent of State of Nevada staff, and that the staffing study was to see if there was appropriate staffing for the corrections environment.

Member Bauer stated that she did not know if a staffing study and a use of force study could fit together with one vendor, so she was unsure if that was appropriate or not, but knew from being an ASO in state service that if there were changes to the Governor's recommended budget it was a big deal but could be done.

Member Bauer stated she was unsure if the State Board of Prison Commissioners met monthly.

Ms. Leather stated that the Board of State Prison Commissioners had meetings scheduled in April, July, and October 2021.

Ms. Leathers stated that if the staffing study was approved NDOC would be able to start it in July 2021.

Member Russell stated that she believed there had been substantial information on the transporting of the more effective option of the lethal weapons, that there should be a way those could be secure in the premises of where they were needed to help reduce or eliminate the transportation issue with those weapons, but was unsure how to put that in a motion.

Member Russell stated she thought the fact that a weapon had to be transported from somewhere outside of the specific unit or secure bubble was a major problem, as the weapons were unavailable where they might be needed.

Member Russell wanted to get this information to both the Board of State Prison Commissioners and the Governor, and that was why the EMC was moving this grievance forward.

Member Bauer made a motion to grant Grievance No. 6847, by resolving that the EMC advise the Governor of the need for NDOC to complete an independent study on the use of force and available tools within NDOC. The EMC recommends NDOC be placed for the use of force topic on the April 2021 meeting of the State Board of Prison Commissioners so that it may be discussed while the Legislature is convened if budgetary action is deemed necessary.

Member Russell seconded the motion. The motion carried unanimously.

MOTION: Moved to grant grievance
BY: Member Bauer
SECOND: Member Russell
VOTE: The vote was unanimous in favor of the motion.

7. Discussion and possible action related to Grievance of Paul Lunkwitz #6856, Department of Corrections – Action Item

Officer Lunkwitz stated that quite a few states across the county had OSHA issues with protecting their employees, and that prisons were no exception.

Officer Lunkwitz stated that the officers knew when they started that prisons were dangerous. He indicated that the bottom line was that birdshot did incapacitate inmates and helped stop violent incidents from taking place, and although the birdshot may not have stopped all violent incidents it stopped many more than the 40 mm launchers stopped.

Officer Lunkwitz stated the primary issue was not lack of tools, but that the officers did not have the tools that were in line with use of force regulations. He stated if someone read through AR 405, there were clearly outlined section on lethal force. That section dealt with the prevention of the loss of life, whether of staff or inmates.

Officer Lunkwitz stated in substance that the launchers NDOC had did not provide the capability to use lethal force when necessary.

Officer Lunkwitz stated an example of the incident that occurred in Ely, NV, where he stated in substance the 40 mm rounds were ineffective. Officer Lunkwitz stated in substance that violent incidents had only grown in number since the Ely incident in the fall of 2019.

Officer Lunkwitz stated that there was another incident where an officer was stabbed in the staff office at High Desert State Prison and stated that previously constructed grates at the unit control room where the officer with the launcher was stationed prevented the use of the 40 mm, as those grates were too small for the 40 mm launcher to fire down into the staff office, so when the officer was stabbed the control officer was rendered meaningless.

Officer Lunkwitz stated it was the same situation applied to the sally port, where the grates did not allow for the 40 mm launchers to be deployed down into those areas.

Officer Lunkwitz stated that if NDOC did not go back to the shotguns they needed a lethal force option available across the state.

Lieutenant McKeehan stated from a supervisory standpoint he was charged with maintaining the safety of staff at his institution, and so he needed to provide the tools so that staff could maintain their safety.

Lieutenant McKeehan stated that this past January they had two officers who were assaulted simultaneously, and the control officer fired the 40 mm launcher several times, and it did not stop the inmates from assaulting the officers, and that the incident did not stop until responding officers arrived and put themselves into harm's way, which to Lieutenant McKeehan was unacceptable.

Ms. Leathers stated that NDOC needed to obey the order provided by the Governor's Office in 2016, and the agency could provide what protocols had been implemented. She stated NDOC had implemented access to many less lethal tools when force was required to be used, such as an ASP baton, large MK 9, small MK 4, tasers, pepper spray and the high velocity 40 MM rounds, and multiple 40 mm launchers with a 6 round capacity.

Ms. Leathers also stated NDOC has also trained officers on each of these tools, according to Ms. Leathers. She stated that all institutional use of force incidents were reviewed at the institutional level and included all staff involved, which involved transparency, and helped officers understand the process while holding them accountable and allowing staff to make suggestions on relevant issues.

Ms. Leathers stated that NDOC had revised outdated policies and instituted new policies, some for the betterment of the agencies.

Ms. Leathers further stated that AR 405 was currently under review, which was NDOC's use of force policy.

Ms. Leather stated that all around the nation the use of force policies had come under great scrutiny, so NDOC was taking the time to make a thorough and accurate review of AR 405 to ensure that it met the requirements of the country as it related to the use of force and modern day corrections.

Ms. Leathers stated that with respect to one of the incidents referenced by Lieutenant McKeehan protocol was not properly followed, and the inmates had been improperly released from their cells without proper custody being available to assist.

Ms. Leathers stated that with Director Daniels coming on board, and his experience in corrections, NDOC had performed training at their facilities from the executive team down to the senior correctional officers on incident response techniques and less lethal options in dealing with inmate incidents.

Officer Lunkwitz called Officer Allen-Ricksecker as a witness.

Officer Allen-Ricksecker testified that he was assigned to HDSP and had worked there since August 7, 2000.

Officer Allen-Ricksecker stated that he was aware of the multiple incidents at Ely and had watched the footage of those incidents. He described the incident as the inmates forming a wall to defeat the officers' less lethal options.

Ms. Leathers objected to the testimony based on the fact that the EMC was a public meeting, and she was unsure if the information being shared

was public and for others outside of NDOC to be aware of, and did not know if it was relevant to what was occurring in the present grievance. Officer Lunkwitz responded that they were not using any names.

Ms. Leathers clarified and stated regardless of whether any names were being shared internal operations were being shared and information about the assault may not have been public information.

Officer Lunkwitz stated that the incident in Ely took place just prior to the grievance being filed, and that was the impetus of what led to his grievance, and the incident was described in the grievance.

Officer Lunkwitz stated that the timeliness issue was relevant, as the Ely incident prompted the grievance, as the issue was the ineffectiveness of the 40 mm rounds and how the Ely incident illustrated that ineffectiveness.

Officer Lunkwitz stated that he was not divulging any confidential information, and that is was discussion of an incident that they were all aware of without specifics.

Ms. Leathers withdrew the objection **but** stated that the way she understood the grievance process a grievant needed to file a grievance for themselves. Here the individuals who filed the grievances, Officer Lunkwitz and Lieutenant McKeehan, were not directly involved in the Ely incident, and she was concerned that the grievances were not specific to Officer Lunkwitz and Lieutenant McKeehan, but to NDOC's custody staff overall.

Officer Allen-Ricksecker stated that during the Ely incident inmates were struck with 40 MM launcher rounds and that the barrier between the inmate being assaulted and correctional staff remained in effect.

Ms. Leathers objected, noting that the particular incident that was being testified to be an active criminal case. It was unclear how, if at all, the testimony would impede any investigation, and Chair Beigel noted that even though the incident occurred at Ely and the Grievants did not work at Ely the Grievants were citing working conditions in their grievances, and so if everyone's guns were taken away the Ely incident was relevant in her mind.

Chair Beigel stated the objection was overruled.

Officer Allen-Ricksecker testified that it appeared the ultimate reason the inmate in the Ely incident stopped the assault was because he simply tired. At HDSP, in the control room there were grates over the staff office and sally port, and the grates were constructed with the idea of shotguns and revolvers in mind.

Officer Allen-Ricksecker stated that it was impossible to deploy the 40 mm rounds down into the office or sally port, as the size of the barrel, the round and the spacing in the grating prevented this. He further noted that with respect to the assault that occurred in the staff office, it was impossible for the control room officer to aid, other than radioing for assistance and being a witness.

Officer Allen-Ricksecker testified to other incidents where the 40 mm was ineffective in quelling disturbances at HDSP, and that there were areas of HDSP the launchers could not reach, and that there were isolated areas all over HDSP, and that the sheer size of HDSP prevented a rapid response to a scene, so the parties involved might have to fend for themselves for several minutes before a response arrived. There were large distances to be covered, and that carts had limited seating. If there was a timely response by the responding officers would be bringing the same tools that the officers on site would have, which was less than lethal force, and so the situation could be one where less than lethal force would be up again lethal force of inmates. He stated that the SN303's were not placed in the security posts where most of the officers worked on a daily basis.

Officer Allen-Ricksecker responded to cross-examination questions, stated that he had been assigned from time to time to search and escort, and it had been years since he had been permanently assigned to the position. He also stated that he was familiar with search and escort duties and had written several procedures at HDSP, had been there for nearly 21 years and had worked in all the positions there over time, and had trained officers working in different positions.

Officer Allen-Ricksecker stated that he was aware of an Emergency Response Management Committee that was formed within NDOC, and that he had submitted written comments in response to emergency management many times. Officer Lunkwitz objected to Ms. Leathers' line of questioning, for relevance.

Ms. Leathers responded that she was trying to show that while Grievants were indicating that working conditions had changed she was trying to show NDOC was making adjustments to working conditions to make sure they were safe for not only employees but inmates, as there was a constitutional requirement that inmate conditions be safe and humane, and was trying to show whether Grievants' information was current or outdated.

Chair Beigel stated the objection was overruled.

Officer Allen-Ricksecker stated that he had submitted countless suggestions and requests to improve operating and working conditions at HDSP and found it offensive that someone would suggest that re-introducing lethal options at HDSP would be inhumane.

Officer Allen-Ricksecker stated that with respect to officers receiving additional training, and less lethal tools, he saw no noticeable or measurable difference in training after the removal in 2016 of shotguns, and that the less lethal tools were not installed prior to the removal of the shotguns.

Member Russell asked Officer Allen-Ricksecker how the OC spray would compare to police officer issued pepper spray.

Officer Allen-Ricksecker responded the spray was identical. Sergeant Berry testified that he was a sergeant with the training division within NDOC and had worked for NDOC for 20 years; he was also a range-master and had been one for 15 years.

Sergeant Berry stated that he was familiar with the incident that occurred at Ely, and had seen the film footage, and agreed that the 40 mm launcher had been defeated in that instance.

Sergeant Berry stated in substance that the 40 mm rounds currently in use were mostly the rubber impact rounds, which were designed to prevent an inmate from continuing their violent acts; additionally, an OC round was used, which turned into a powder on impact and created dust like particles to irritate the inmate, and was similar to OC spray its effects.

Sergeant Berry testified that with respect to whether there were more effective rounds with respect to the launcher system, there were higher velocity rounds, and he testified that in his experience whether or not the launcher could stop a violent attack was contingent on how far away the inmate was, but was aware of many incidents where the 40 mm launcher was ineffective in stopping inmate attacks, whether against officers or other inmates.

Sergeant Berry stated that there were less lethal rounds than birdshot in the 12-gauge delivery system, including bean bags, rubber pellets and rubber blocks.

Sergeant Berry stated that there were other lethal options at HDSP, including a Glock 22 handgun and a Ruger mini 14. He also stated that with respect to the shotgun being able to fire lethal and less lethal ammunition, it had to be clear that any shotgun that fired less lethal rounds had to be color coded so only less lethal ammunition went into it.

Sergeant Berry testified that currently there was no lethal force option at HDSP, and that less lethal tools needed to be supported by a lethal option, as was standard for law enforcement across the country. Due to the size of HDSP and delayed response times according to Sergeant Berry HDSP needed a lethal force option in every unit at HDSP, and

working conditions were not as safe as they could be without the lethal force option.

Sergeant Berry stated that when NDOC transportation drove the bus transporting inmates those officers carried handguns, pepper balls, rifles, batons, tasers and OC, and that these tools were available to protect inmates from inmates, staff, and the public from inmates.

Sergeant Berry clarified that the 40 mm shot a rubber sponger round.

Sergeant Berry was asked if it was his job to kill inmates, which was objected to.

Ms. Leathers stated that the removal of the shotguns followed an incident at HDSP where officers shot an inmate with the shotgun, resulting in death.

Chair Beigel stated the objection was sustained.

Sergeant Berry stated that it was the job of the officers to protect both staff and inmates, and that it was not common for officers to use lethal force.

Sergeant Berry stated that the 40 mm was doing its job but was unable to accomplish every job for stopping threats, and the officers were limited by it, as it was the only tool the officers had to stop violent incidents.

Sergeant Berry stated that he felt the shotgun should be coupled with other less lethal options, as there was no one weapon that would solve all issues.

Sergeant Berry felt that lethal tools should not be the first option in stopping violent incidents, and should be the last option, but if the lethal option was unavailable that was creating an unsafe environment.

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Ms. Leathers added that NDOC was requesting a staffing study as part of the 2022-23 biennium budget, and it was part of the Governor's recommended budget.

Ms. Leathers stated the staffing study could include whether tools NDOC was using were effective.

Officer Lunkwitz stated that any study should be independent of NDOC personnel.

Member Russell stated that she agreed with an independent study and that it would probably pull more weight and be more effective than anything done internally by State of Nevada staff.

Ms. Leathers stated that the staffing study she had referred to earlier would be a study performed by an outside entity independent of State of Nevada staff, and that the staffing study was to see if there was appropriate staffing for the corrections environment.

Member Bauer stated that she did not know if a staffing study and a use of force study could fit together with one vendor, so she was unsure if that was appropriate or not, but knew from being an ASO in state service that if there were changes to the Governor's recommended budget it was a big deal but could be done.

Member Bauer stated she was unsure if the State Board of Prison Commissioners met monthly.

Ms. Leather stated that the Board of State Prison Commissioners had meetings scheduled in April, July, and October 2021. She also stated that if the staffing study was approved NDOC would be able to start it in July 2021.

Member Russell stated that she believed there had been substantial information on the transporting of the more effective option of the lethal weapons, that there should be a way those could be secure in the premises of where they were needed to help reduce or eliminate the transportation issue with those weapons, but was unsure how to put that in a motion.

Member Russell stated she thought the fact that a weapon had to be transported from somewhere outside of the specific unit or secure bubble was a major problem, as the weapons were unavailable where they might be needed.

Member Russell stated she wanted to get this information to both the Board of State Prison Commissioners and the Governor, and that was why the EMC was moving this grievance forward.

Member Bauer made a motion to grant Grievance No. 6856, by resolving that the EMC advise the Governor of the need for NDOC to complete an independent study on the use of force and available tools within NDOC. Further, the EMC recommended NDOC place the use of force topic on the April 2021 meeting of the State Board of Prison Commissioners so that it may be discussed while the Legislature is convened if budgetary action is deemed necessary.

Member Russell seconded the motion.

The motion carried unanimously.

MOTION: Moved to grant grievance #6856
BY: Member Bauer
SECOND: Member Russell
VOTE: The vote was unanimous in favor of the motion.

8. Discussion and possible action related to Grievance of Jonathan Allen-Ricksecker #6817. Department of Corrections – Action Item

Chair Beigel opened discussion for grievance #6817 Jonathan Allen-Ricksecker, noting it was similar to grievance #6861 for John Roop.

Member Russell stated she thought it was very similar to the grievances heard earlier in the hearing.

Member Bauer stated she was ready to present a motion to grant grievance #6817 for Jonathan Allen-Ricksecker without a hearing based on the EMC's prior decision on grievances #6847 and #6856 heard on March 04, 2021 EMC.

Member Russell stated she seconded motion.

Chair Beigel asked for discussion before the vote.

Chair Beigel states each vote per member.
Chair Beigel states The motion carried unanimously.

MOTION: Moved to grant grievance based on #05-21 Lunkwitz, and #07-21 McKeehan.
BY: Member Bauer
SECOND: Member Russell
VOTE: The vote was unanimous in favor of the motion.

9. Discussion and possible action related to Grievance of John Roop #6861. Department of Corrections – Action Item

Chair Beigel opened discussion for grievance #6861 John Roop.

Member Bauer stated she was ready to present a motion to grant grievance #6861 for John Roop without a hearing based on the EMC's prior decision on grievances #6847 and #6856 heard on March 04, 2021 EMC.

Member Russell stated she seconded motion.

Chair Beigel asked for discussion before the vote.

Chair Beigel states each vote per member.

Chair Beigel states The motion carried unanimously.

MOTION: Moved to grant grievance based on #05-21 Lunkwitz, and #07-21 McKeehan.

BY: Member Bauer

SECOND: Member Russell

VOTE: The vote was unanimous in favor of the motion.

10. Public Comment

Mr. Allen-Ricksecker stated he wanted to thank the committee for hearing his issue and he appreciated the boards time; it meant a great deal to him and his co-workers.

Ms. Leathers stated she wanted to thank the board for their time to help resolve their issues.

11. Adjournment

Chair Beigel called the meeting to order at approximately 12:32 pm.

bopc - NDOC needs a lethal force option

From: Jonathan Rivera <jdrivera42@yahoo.com>
To: <BOPC@doc.nv.gov>, Lunkwitz <lunkwitzfop21@yahoo.com>
Date: 7/26/2021 9:44 PM
Subject: NDOC needs a lethal force option

Good evening,

My name is Jonathan Rivera and I am a Correctional Lieutenant at High Desert State Prison (HDSP). I have been employed with the Department of Corrections since 2011 where I began my career at Southern Desert Correctional Center (SDCC). I am the lead range instructor for my facility at HDSP and am witness to the minimal training our officers are given while we demand excellence day to day.

When we had a lethal option on the yard, Remington 870 shotguns, more often than not the blank warning shot was substantial enough to get the inmates attention to stop the disturbance. Having the lethal option served as a visual deterrent and mental reminder of potential consequences. If we had a rifle such as the AR-15 in our elevated armed posts we would be able to preserve life both inmate and staff if the situation ever called for it as a last resort.

Our staffing numbers are hard to maintain with some of our units being staffed with 2 officers one of which is on the floor and the other in the elevated control booth. Those units are housed with 168 inmates and only 2 officers armed with only less lethal equipment. Our less lethal firearm is the 40mm launcher manufactured by Penn Arms. The capability of the weapon system had been found ineffective in many disturbances. Those disturbances have been documented and video recorded with the cameras at various facilities such as HDSP and Ely State Prison. Inmates were able to block the 40mm launcher by making a wall similar to how soccer players make a wall to block a free kick.

We are asking our staff to use this weapon efficiently and accurately on a daily basis to protect staff and inmates. Our officers only fire this weapon one a year with 3 rounds for qualification. Qualification is just another word for test not training. Staff do not get practice rounds or live fire training yet we expect them to pass qualification once a year and not miss during a high stress disturbance.

We have already had staff get stabbed and in another incident attempted to throw an officer off the top tier. The lethal option is needed for not if, but when we will need to preserve the life of a staff member. Training will also need to be a huge part in regards to use of force continuum and scenario based training.

I ask that you please consider a lethal force option, other protective equipment and training for the officers who work for the Nevada Department of Corrections.

Jonathan Rivera

FOP member Lodge 21

[Sent from Yahoo Mail for iPhone](#)

bopc - BOPC Meeting Comments for the record

From: Paul Lunkwitz <lunkwitzfop21@yahoo.com>
To: <BOPC@doc.nv.gov>
Date: 7/26/2021 8:31 PM
Subject: BOPC Meeting Comments for the record
Attachments: bopc statement.pdf

BOPC July 27th, 2021 Meeting

My name is Paul Lunkwitz, I was a Correctional Officer at High Desert State Prison. I was a correctional officer with the Nevada Department of Corrections since June 5, 2000. I am also the President of Nevada C.O. Lodge 21 of the Fraternal Order of Police. In all my years of experience as an officer and in my 13 years of representing officers in various capacities, I can tell you that there has never been a more critical issue than the one we are here to discuss today. The highly contested removal of the potentially lethal firearms from protective posts inside our institutions back in 2016 caused an evolution within the Nevada Department of Corrections. Officers have evolved to rely solely on less lethal options in the performance of their duties. While access to **additional** less lethal options was a responsible decision, the removal of a lethal force option was **negligent** and in **disregard** to the mission of the NDOC.

I established at the EMC hearing that inmates have defeated and fought through every single less lethal option that we have available in the NDOC currently. After outlining the conditions under which we are asked to work under, and discussing the various violent attacks on officers and inmates, The EMC granted my grievance after a unanimous vote. The **NDOC is failing its Officers, Inmates, and the Public**. I will ask all of you on the BOPC the same question I asked the EMC: "Would any of you on the BOPC feel comfortable sending 10 officers with no stab vests, helmets, shields, tasers or **lethal force option** to work a housing unit that houses 336 inmates over a mile away from the operations building? No? How about 4? Thats right ladies and gentlemen, on dayshift units 9 through 12 are staffed with 4 officers per unit. Over a mile away from the operations building, no stab vests, no tasers, no shields, no helmets, and **no lethal force option!**"

Our use of force training teaches us that there are 6 levels of force. #1 officer presence, #2 verbal commands, #3 restraints, #4 chemical agents, #5 incapacitation tools, and #6 deadly or lethal force. With no lethal force option available to the officers in these positions, we are not talking about **if** an officer will ever be murdered, but **when** an officer will be murdered. Inmates have already attempted to and murdered inmates. Inmates have also expressed their own concern regarding our ability to protect them from other inmates. This is a life or death issue we are here to discuss today.

I cannot be certain what Deputy Director Williams intends on discussing during the appropriate time on the agenda. I know I did have a conversation with him regarding this grievance after I spoke up at the previous April BOPC meeting. He expressed to me that Christina Leathers was at fault for not keeping the Directors in the loop. If she should offer any input to this proceeding, I would suggest her lack of experience and naivety be taken into consideration. She made several false claims and used derogatory language(kill inmates) during her incompetent representation at the EMC Hearing in March 2021. D.D. Williams further intimated that the administration is on my side in

equipping the appropriate gun posts with a lethal force option. I am quite sure that his remarks today will be far more politically muted.

The bottom line is you wouldn't ask a police officer to work the streets with only less lethal tools. You wouldn't ask a soldier to go to war with less lethal tools. We as officers are being asked to work in an environment where the inmates we are responsible to protect are scared for their lives, but those we oppose are equipped with lethal weapons. We are being asked to uphold this NDOC mission without the realistic lethal force platform that we need.

I am well aware that the order to remove lethal firearms and birdshot from our protective gun posts came from the former governor of Nevada. If Governor Sisolak needs to change this directive, then so be it. If this vital safety issue continues on unchanged, and this BOPC, NDOC administrators, the attorney generals office, and the NDOC Director do not make every effort to fix this issue, you will all bear this liability. One day you will hear the news that an officer, staff member, vendor, visitor, or inmate was murdered due to the lack of a lethal force option at our institutions. This burden will fall on everyone who had a chance to prevent this from happening. I humbly ask that after reviewing the evidence and exhibits from my EMC hearing, and hearing the comments submitted today, you vote to equip all staff with protective stab vests and that every single secure protective post throughout the NDOC be equipped with mini-14 rifles or similar firearm, as well as **effective less lethal** firearms and ammunition. Thank you for your careful consideration.

Paul Lunkwitz
President
FOP Nevada C.O. Lodge 21

From: Paul Lunkwitz <lunkwitzfop21@yahoo.com>
To: <BOPC@doc.nv.gov>
Date: 7/26/2021 7:14 PM
Subject: 7-27-21 BOPC meeting
Attachments: EMC Minutes 03.04.2021 pending approval.pdf; Part.002

Dear Prison Commissioners,

> The below attachment is the minutes from the EMC Hearing on March 4, 2021. There you can read what took place in regards to my Lethal Force grievance. You will see where it was clearly discussed and understood by Christina Leathers, that this grievance was granted and to be put on the agenda for the April BOPC meeting. I attended that meeting via telephone. Now for this July meeting, I cannot attend in person due to being out of state. This is a very disappointing development. I will submit my public comments in a separate email, but would prefer being allowed to speak telephonically or via video conference at tomorrow's meeting. Thank you for your consideration.

>

> Respectfully,

>

> Paul Lunkwitz

> President

> FOP Nevada C.O. Lodge 21

> 702-529-0627

>

> <https://hr.nv.gov/uploadedFiles/hrnvgov/Content/Boards/Employee-Management/EMC%20Minutes%2003.04.2021%20pending%20approval.pdf>

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bopc - Public Comment Related to Use of Force Discussion

From: Jonathan Allen-Ricksecker <jrar10390@yahoo.com>
To: "BOPC@doc.nv.gov" <BOPC@doc.nv.gov>
Date: 7/26/2021 5:19 PM
Subject: Public Comment Related to Use of Force Discussion
Cc: bobashcraft1964 <bobashcraft1964@gmail.com>, Prater FOP21 <praterfop21@y...>
Attachments: BOPC Lethal Force Issue.docx

Pursuant to the instructions on the Board of Prison Commissioners Meeting and Agenda Notice, this email and or the attachment is submitted within the timeframes specified for inclusion in the Public Comment Section for the agenda set forth on July 27th, 2021.

To: The Board of Prison Commissioners

Subject: Public Comment Related to Use of Force Discussion

Agenda Date: July 27th, 2021

On or around May 24th, 2016 the Nevada Department of Corrections (NDOC) at the direction of former Governor Brian Sandoval intentionally, willfully, and negligently removed strategically placed firearms and deterrents from all the correctional facilities inner perimeter protective post and replaced them almost exclusively with the 40 mm less lethal launchers and a limited amount of munitions with limited applications, while other post remain to date unequipped. The removal of the suitable firearms and appropriate munitions eliminated the ability and options of the protective post as built and designed to lawfully and appropriately respond to and utilize the higher levels of the Use of Force Continuum including the potential application of justifiable lethal force when necessary for self defense or the defense of others and or to render aid and safeguard correctional staff, volunteers, visitors, vendors, contractors, and inmates. The elimination of practical firearms as utilized as a historically standard correctional tool within the industry as both "protective equipment" and a "safety device" within the correctional setting has created significantly dangerous working conditions for staff and living conditions for offenders. The inmate population is well aware of this fact and have exploited and monopolized upon it.

Recently on two occasions both occurring at Ely State Prison members of the Security Threat Groups (STG's) a.k.a. criminal prison gang members with murder in their hearts and on their minds contrived a counter to and successfully defeated the 40 mm less lethal launcher option, the only available options to staff at that time, that were and are ultimately entirely unsuitable and ineffective to resolve this type of specific threat, during two well organized inmate on inmate felonious assault and batteries, a.k.a. unsuccessful murders consisting of multiple stabs, punches, and kicks, that occurred when the numerically superior inmate population formed a human barrier around the assailant(s) and victim(s), and between staff in order to entrap the prey and ward off and circumvent responding staff and security response measures including the potential of deploying additional 40 mm launchers. Peace Officers were relegated to spectators and eyewitnesses, but could have just as easily been counted as additional victims. Several Prisons have been locked down due to inmates openly speaking about and conspiring to attempt to kill a staff member, any staff member. "Prisons maybe inherently dangerous workplaces, but the employer is still required to take every reasonable precaution to protect corrections officers and other correctional staff against safety and health hazards including assault," (OSHA).

On March 4th, 2021 the EMC heard grievances related to the lack of effective use of force options and equipment and unanimously agreed by resolving that the EMC advice the Governor of the need for the NDOC to complete an independent study on the use of force and available tools within the NDOC. The EMC recommended the NDOC place the topic on the Board of Prison Commissioners agenda. The issue is ripe for discussion.

The Federal Occupational Safety and Health Act (OHS) 1970 requires and states, "employers are responsible for providing safe and healthful workplaces for their employees." OSHA has no specific standard on

workplace violence, however OSHA does state “workers have a right to a safe workplace.” OSHA law does not cover state and local government employees necessarily due to “state sovereignty” rights, however, states such as Nevada have opted, run their own state OSHA programs that are approved by OSHA. The Nevada OSHA program is contained within N.R.S. Chapter 618 titled Occupational Health and Safety as a whole and additionally specifically NRS 618.295 (8) which adopts federal safety and health standards and regulations, and enforcement measures. NRS 618.195 mandates state agencies to “establish and maintain effective and comprehensive occupational safety and health programs consistent with” NRS Chapter 618. NRS 618.375 titled “Duties of Employers” states, ‘Every employer shall: 1. Furnish employment and a place of employment which are free from recognized hazards that are causing or are likely to cause death or serious physical harm to his or her employee. 2. Furnish and use safety devices and safeguards, and adopt and use such practices, means, methods, operations and processes as are reasonably adequate to render such employment and places of employment safe and comply with all orders issued by the division.” NRS 618.165 titled “safety device” or “safeguards” defined states “Safety device” or “safeguard” means any practical method of mitigating or preventing a specific danger.”

OSHA has a series of applicable news releases concerning enforcement actions for inadequate workplace violence and prevention plans cases such as *Mississippi Correctional Facility*, *Corizon Health Inc.* at Rikers, *Brookdale University Hospital and Medical Center*, and the *GEO Group* who operate several Correctional Institutions within the U.S. In the *Mississippi Correctional Facility* matter OSHA said, “This employer knowingly put workers at risk of injury or death by failing to implement well-recognized measures that would protect employee from physical assaults by inmates.” This included one willful violation” for exposing employees to workplace violence and failing to take adequate measures to reduce the risk of violence.” *Corizon* was cited for “failing to develop and implement an effective workplace violence and prevention program for its employees at Rikers.” because “*Corizon* was aware of the workplace violence incidents...yet the issue has not been addressed sufficiently.” In *Brookdale University Hospital and Medical Center* the “Employer failed to protect employees adequately against workplace violence.” Brookdale management was aware of these incidents and did not take effective measures to prevent assaults against its employees.” These incidents involved employees who were threatened or physically and verbally assaulted by patients and visitors. Brookdale was cited “for failing to develop and implement adequate measures to reduce or eliminate the likelihood of physical violence and assaults against employees...” The GEO Group failed to develop “...comprehensive procedures and policies to better safeguard its workers against the hazards of workplace violence in every correctional and adult detention facilities that it manages.” OSHA states, “A serious violation occurs when there is a substantial probability that death or serious physical harm could result from a hazard about which the employer knew or should have known.” OSHA states, “A Willful violation is one committed with intentional knowing or voluntary disregard for the law’s requirements, or with plain indifference to worker safety and health.”

The Nevada Department of Corrections, a non-exempt State entity and employer whom is governed and subject under the requirement of the Nevada OSHA statutes in NRS Chapter 618 and the Federal OSHA requirements as codified and adopted by the State, and established national, state, and industry standards; including the “Duties of Employers” (NRS 618.375) to 1. Furnish employment and a place of employment which are free from recognized hazards that are causing or are likely to cause death or serious physical harm to his or her employee. 2. Furnish and use safety devices and safeguards, and adopt and use such practices, means, methods, operations and processes as are reasonably adequate to render such employment and places of employment safe and comply with all orders issued by the division is similarly required by the Federal OSHA to abide by and ensure Nevada public employee “workers have a right to a safe workplace” and that the state departments and agencies as “employers are responsible for providing safe and healthful workplaces for their employees”

The NDOC breached their “duty” as an employer (NRS 618.375) and violated Federal and Nevada OSHA Laws when the NDOC knowingly, intentionally, willfully, and negligently removed effective vital “safety devices”(NRS 618.165) and security deterrent equipment from the inner perimeter protective post and failed to provide adequate effective replacement safety equipment cable of mitigating inevitable and foreseeable workplace hazards and violence including but not limited to violent inmate on staff assaults and batteries, and failed to”... establish and maintain an effective and comprehensive occupational safety program consistent with the objectives with the provisions promulgated...” in NRS Chapter 618 and failed to “...provide their employees with conditions of employment consistent with the objectives of this chapter...” meaning Chapter 618, “...and comply with standards developed under NRS 618.295) and other national standards and industry standards (NRS 618.125).” Every OSHA applicable news releases citation , opinion, and quotation concerning enforcement actions for inadequate workplace violence and prevention plans cases such as occurred and referenced above in the *Mississippi Correctional Facility*, *Corizon Health Inc.* at Rikers, *Brookdale University Hospital and Medical Center*, and the *GEO Group* cited above in this matter are applicable to the NDOC as either a working conditions, failure

to act, a failure to develop, implement, and maintain an effective and comprehensive safety program, a failure furnish adequate effective safety equipment, or just plain deliberate indifference and disregard for the applicable law and human life. No police or correctional agency can routinely meet deadly encounters and situations, some involving prison made weapons, with only less lethal force options and expect to always prevail or live through the encounter. NDOC Staff attrition rates are among some of the highest comparatively, and conditions of employment and the institutional working conditions are definitely a factor

The Proposed Resolution remedy would consist of the re-installation and re-equipping with suitable safety devises and protective equipment to include firearms and munitions the inner perimeter protective post. I request that the Board of Prison Commissioners intervene to the extent of their conscious and authorized state statutes and codes permit, including the consideration of initiating a Climate Study or consulting with a recent Climate Study if deemed applicable and appropriate

On behalf of myself and my fellow correctional officers, I thank you for your time and consideration regarding this matter

Sincerely;

Jonathan R. Allen-Ricksecker.

bopc - LETHAL FORCE Grievance/BOPC MEETING

From: Jefe808 <jefe808@yahoo.com>
To: "BOPC@doc.nv.gov" <bopc@doc.nv.gov>
Date: 7/26/2021 4:36 PM
Subject: LETHAL FORCE Grievance/BOPC MEETING

Correctional Officer J. Wagner, FOP member:

I would like to know what options are being presented to administer Lethal Force? As we all know the 40 MM Foam Baton Round is ineffective, and the inmates know this. What options do we have inside the units as well as on the yard? In my opinion, a 12 Gauge Shotgun with Frangible rounds would be effective and limit any ricochets.

Thank you,
C/O J. Wagner