



**DRAFT**

MINUTES

of the meeting of the

BOARD OF PRISON COMMISSIONERS MEETING

October 14, 2008

The Board of Prisons Commissioners held a public meeting on October 14, 2008, beginning at 1:00 p.m. at the following locations:

at the State Capitol Building Annex, 2<sup>nd</sup> floor, 101 N. Carson Street, Carson City, Nevada and video conferenced at Grant Sawyer State Office Building, Room 5100, 555 E. Washington Ave., Las Vegas, Nevada.

I. Call to Order.

The meeting was called to order by Secretary of State Ross Miller. He noted that Governor Jim Gibbons was absent and the Secretary of State will serve as Chair. It is noted that Attorney General Catherine Cortez Masto is present. He noted there were a number of members of the public present who wanted to comment on actions before the Board. Secretary of State Miller moved that Item VIII – Public Comment, be reflected as Item III on the agenda

Also present were Senior Deputy Attorney General Janet E. Traut, Senior Deputy Attorney General Keith Marcher, Director Howard Skolnik, Deputy Director Support Services Lori Bagwell, Deputy Director Don Helling, Chief of Staff Josh Hicks, Deputy Secretary of State for Southern Nevada Chris Lee, and members of the Press. Members of the public were asked to sign in, and the sign-in sheet is attached [Attachment A](#).

II. Acceptance and Approval of Minutes – August 12, 2008. (action required)

The record shows the Minutes of the August 12, 2008 were approved unanimously. There were no comments or questions from the commissioners.

VIII. Public Comment

Comments from Carson City:

Dennis Mallory from AFSCME Local 4041 spoke on behalf of the organization's members. He stated statewide union leaders of AFSCME met on October 11<sup>th</sup> to discuss the safety and security concerns within their respective facilities to determine a way to rectify their concerns. Mr. Mallory stated the members then voted unanimously to call for Nevada Department of Corrections (NDOC) Director Howard Skolnik's resignation. They cited inadequate staffing resulting in excessive overtime, senseless investigations that violated the members' first amendment rights and the dangerous implementation of a Correctional Assistance Program at Ely State Prison (ESP). Mr. Mallory stated they believed the Director has violated NRS 209.131. He stated that AFSCME has brought this to the Director's attention several times but he failed to act. AFSCME's legal team is gathering evidence and depositions and they will be requesting a Grand Jury investigation. They had no choice but to ask for Director Skolnik's resignation.

Kevin Ranft, Correctional Officer at Northern Nevada Correctional Center (NNCC) and member of AFSCME Local 4041 requested to speak regarding the Correctional Officer Assistance Program in Ely. He stated in 2003 there was legislative action which precluded NDOC from hiring any correctional office assistance and that was addressed to Director Skolnik but he has not responded to their concerns. This has led to some institutions to be understaffed, unsafe and morale is at an all time low throughout NDOC. C/O Ranft stated the Department has created a public frenzy with the upcoming closure of Nevada State Prison (NSP). He commented they know NSP is old and possibly part of it has to be shut down but they are concerned about the process the Department is taking. He questioned why the Department couldn't build a new prison in Carson City to replace NSP where the turnover rate is 16% and stated the turnover rate was 38% in the southern region and they can't keep staff. He stated he wanted it on the record that in order for morale to change, give correctional officers equal treatment to 90% of the law enforcement agencies throughout the Department which are on alternative shift schedules, a 12 hour shift, and the morale would improve like night and day. He stated that would give officers time away from the facilities to recoup, to spend time with their family and to get away from the atmosphere. He stated the low morale will cause a serious safety concern, an officer's injury or even an employee's death.

C/O Ranft stated that it was his understanding that AR 105, Operational Procedures (OPs), took over Institutional Procedures (IPs), and that this is problematic citing it breaks down consistency throughout the NDOC. He stated the institutions are all running a different show and nobody knows what is going on. He stated that when officers go through training they preach consistency, but there is zero consistency at NDOC. His recommendation, through AFSME Local 4041, is to discontinue any OPs and strictly go through the Administrative Regulations (ARs) with the exception of custody issues which could be drafted under something like an OP on how to deal with custody levels. He stated at the present time the Wardens just go out and put policy in place which is sad because it is not regulated. The union wants regulation and accountability which is not happening. He cited OP 330, a procedure on mandatory overtime as an example and that it was not brought to the Deputy Attorney General for review which is causing a lot of officers to want to quit because of the way they are being treated i.e. with no dignity or respect.

ASFCME has drafted a policy which was given to Director Skolnik and has yet to be put in place. C/O Ranft stated the investigations taking place now are not a lawful order and the Department should reconsider their investigation process. He stated the NDOC needs two entities, the Office of the Inspector General which would be solely for inmates and a new division of Internal Affairs solely for the investigation of officers and staff.

Teresa Werner requested to speak. She agreed that there is inadequate staffing in the prison system and she hears that from her husband who is an inmate. She also agreed that there is excessive overtime which is a burden on the state. Mrs. Werner stated from the inmates' point of view the low staffing in prisons result in inmates being locked down 24-7. She has heard from some inmates they do not have access to the bathrooms at night and have to use bottles, then are written up for doing so which is due to inadequate staffing and ridiculous overtime.

Mrs. Werner stated that she has seen the morale of the correctional officers going down. They use to be pleasant and happy but are now getting testy with inmate families. She stated if the guards are testy, the inmates are testy. Mrs. Werner wanted to comment on senseless investigations but was not sure what they are because she felt there are investigations that are very necessary but there should be an external, not an internal, investigation system for both the guards and the inmates. She stated she knows of thefts inside of prisons where the guards have stolen food and sold it. She was sad to see that there are only three members that act as an oversight to the prison system. Mrs. Werner wanted to comment on the ARs but stated without an oversight committee they are as useless as the paper they are written on.

Mrs. Werner agreed there is no consistency between the prisons. Her husband was transferred from NSP to Warm Springs Correctional Center (WSCC) and the search consent form on rules for visiting were different. She stated when inmates are transferred to a different facility they think they know the rules but they are different and get written up. The Wardens were also different. Mrs. Werner commented on the great work that Justice Hardesty and the committee are doing as she attends almost every meeting.

Dan Shoup, Senior Correctional Officer from NNCC, requested to speak. He stated he has worked for the Department for 11 years and in law enforcement for 25 years. When he first started working at the Department he found staff to be professional with officers who would look out for each other. He stated street cops have a \$60,000 car, weapons, and are equipped with radios to different departments to come and pull "their fat out of the fire" when things got rough. SC/O Shoup noted that inside the prison environment, officers are surrounded by a collective population of convicted felons and in that environment he has a flashlight and a pair of handcuffs and the only thing he can count on were the people sitting in this room.

SC/O Shoup stated if there are not enough officers, and if people are tired, he had no way of knowing if he was going to walk out of the institution on any given day. He stated he believes the Department is at its lowest morale. He stated he hears nothing but eight hours of people complaining about being investigated for not working overtime. He believed the term they were told was "it didn't matter if someone died in your family, if you're slated to work, you'll work". He feels officers are being treated worse than the people they are watching and feels the officers don't matter to the Department.

SC/O Shoup stated the only reason he walks through the fence to work is because the people in this room are counting on him, not because the Department itself does, but because of the officers in the room. SC/O Shoup stated that when he first came to the Department he had to take a test to be qualified for the job but they don't do that anymore.

Tosh Dawson requested to speak. She stated that after coming to the Board meetings and the Advisory Commission meetings for over a year, all she hears is that the prison system isn't working. It is hard to hear that it is Director Skolnik's problem and with a zero budget you are suppose to make this entire system work, so just do it. She doesn't know how the guards are suppose to remain pleasant after working overtime after eight hours and that eventually someone will get hurt, either guards or inmates. Mrs. Dawson feels the prisons we have and the budgets are not working. Instead of pointing fingers at everybody it would be better to find solutions. Her husband is in prison and she worries about his safety and worries that there will be a riot. She would like the Board to realize that warehousing isn't working and pointing fingers isn't working. Mrs. Dawson stated if you treat people with respect they in turn will treat you with respect and she has seen people being rude to officers and in turn they are rude to them.

Rebecca Gasca from the ACLU of Nevada requested to speak. She entered into the record a written statement regarding AR 610. ([Attachment B](#))

Gene Columbus, Nevada Corrections Association (NCA) requested to speak. He agreed there is a serious issue with the Department and agreed with the previous comments on investigations. He stated he believes the biggest issue is accountability with the administration and the budget crisis. C/O Columbus stated NSP should not be closed and the Department needs to rethink that decision.

Jeff Fontaine, Executive Director of the Nevada Association of Counties requested to speak and comment on Item IV. He stated he testified at the August 12<sup>th</sup> Board meeting urging the Board to delay the approval of closing honor camps throughout the state as part of the 14% budget reductions ordered by the Governor. Mr. Fontaine urged the Board to delay any decision to close those honor camps. He recently went to Tonopah and Pioche and the people there are extremely worried about the possibility of those camps closing. In Pioche with a population of 800 people, 30 people have the possibility of losing their jobs with a similar situation in Tonopah.

Mr. Fontaine stated the Association believes closing those camps would have a devastating impact to those rural communities. It would remove a very qualifying source of labor as those inmates are used to respond to wildfires and perform other worksite projects. Director Skolnik had stated at the August 12<sup>th</sup> meeting that closing the camps would cause the state to spend more money to fight fires. Mr. Fontaine urged the Board to please delay any decision to approve the closing of the honor camps as part of the upcoming budget.

Allen Sweet, founder of the "I Am" Workshop Tour submitted [Attachment C](#) for the record.

Comments from Las Vegas:

Donald Hinton from the Spartacus Project in Las Vegas, a prisoner advocacy, requested to speak. He read a letter from Michelle Ravell to be entered into the record as she could not attend this meeting. [Attachment D.](#)

Flo Jones submitted her written statements to be entered into the record. [Attachment E.](#)

Donald Hinton informed the Attorney General about an inmate that died at High Desert State Prison (HDSP) because an officer did not answer the buzzer to assist the inmate and he was found dead the next morning. The entire unit screamed for the officer to leave his bubble to go and address the inmate's medical needs but he did not and told the inmates to shut up. Mr. Hinton stated it was time that an audit was done and if Governor Gibbons did not want to end up in there with the rest of them, he should take heed of what's going on because he's not all that safe himself.

Gloria Rosen requested to speak on behalf of the inmates at HDSP who have requested programs or schooling, jobs or vocational training and most of them are being denied. She stated this is causing them to lose their good time and an opportunity to lower their points. The inmates were also concerned that there are two men to each cell and they can only flush the toilets every 20 minutes which is a health hazard. The inmates are not happy that the package program was cancelled and they want to know why. She stated she thought the rehabilitation program was great as it would turn their lives around to become productive citizens.

Submitted for the record by Valerie Green. [Attachment F.](#)

III. Discussion regarding Department of Corrections budget reductions from the perspective of the Advisory Commission on the Administration of Justice – Supreme Court Justice Hardesty.

Justice Hardesty, member of the Nevada Supreme Court and Chairman of the Advisory Commission on the Administration of Justice stated he appreciated hearing the information previously provided during the Public Comment. The Advisory Commission has undertaken a number of studies relating to prison overcrowding, prison budget and a number of other issues which is an ongoing process. Justice Hardesty stated he is speaking for himself today because the other commissioners will not vote on a number of issues until next Monday. The Commission has already made some 20 to 30 recommendations and there has been 15 to 20 Bill Draft Requests aimed at seeing the front end as well as the back end of the prison system.

Justice Hardesty noted the prison system has been made to make significant cuts in their budget to an already under funded enterprise. The DOC provided the Commission with a detailed breakdown of their budget. The Commission has concerns with the population throughout the prison system and as a whole they are operating at a 146% of capacity. He stated that Lovelock Correctional Center (LCC) is operating at 185% of capacity, WSCC is at 177% capacity, and HDSP is 178% capacity. With respect to the camps, they are collectively at 94% of capacity but many of the camps are exceeding 100%. As an example Stewart Conservation Camp (SCC) is at 149% of capacity.

Justice Hardesty stated the Department cannot operate at these capacities and to continue to make cuts on an already overburdened prison system is simply a recipe for very serious consequences regarding safety issues concerning guards and staff and would expose the state to serious legal consequences as we have seen in California.

Justice Hardesty stated the prison system has 223 positions that have been frozen or eliminated as part of the budget cutting process. The state is cutting positions that are necessary to operate an already overcrowded operation. The Commission believes that the staffing pattern is creating safety concerns. The relief factor of 1.6 which is built into the budget should be 1.82. The Commission was advised that the NDOC is spending over 8 million dollars in overtime while at the same time cutting positions in order to try to save 7 million dollars and that is working backwards. The Commission took one prison, NNCC, to test the thesis and instead of cutting personnel, the Department should be adding personnel to work straight time. This would increase the level of the relief factor and reduce the amount of cost the state is actually spending. Justice Hardesty stated by adding 10 positions would result in a \$270,000 savings in overtime hours. The Commission also said by adding 70 positions at straight time, the Department could reduce the overtime cost by over two million dollars and still have an acceptable level of money for overtime costs as necessary. This would also change the relief factor from 1.6 to 1.68, still not acceptable, but an increase nevertheless. If the Department continues to cut and freeze positions as a goal of saving money in the prison system, more money will be spent on overtime to meet necessary obligations. He stated the Board should insist that overtime spending be replaced with straight time.

Justice Hardesty stated the Commission is concerned about base budgeting system used by NDOC and throughout the state and it is a system that penalizes the budget process from year to year. They do not believe that the prison system can operate on the food budget that it is currently operating under. The Commission is also very concerned that there is a continuing decline of programs. He stated that 9,000 of the 13,000 inmates will eventually return to the streets at some point yet there is no system in place that adequately prepares these individuals for reentry due to the consequence of the budget cuts. He stated the state must reevaluate its' reentry program which would allow the transition of inmates expiring their term.

The Commission is concerned about the medical health situation that exists within the prison system stating 1,700 inmates are age 50 or over and many of them have serious medical health needs. Justice Hardesty stated the Commission asked Ms. Traut, at his request, to provide a report for the scheduled meeting on Monday as to what alternative the state has to explore, such as Medicare and Medicaid or an alternative payment to relieve some of the health expense budget. He stated the Medical Division is 30 staff short at this time and this is a dangerous circumstance for all those involved.

Justice Hardesty spoke of undocumented immigrants in the prison system stating a recent review identified 1,700 plus inmates with ICE holds. He stated about a year ago the Pardons Board looked at some 200 plus inmates and granted conditional pardons to 106 inmates for the purpose to be deported from the country.

Mr. Smith of the Parole Board provided Justice Hardesty with a recent report for the criteria of those inmates. They are foreign born inmates with an ICE hold and have no history of a felony sex offence or violence with less than 36 months to parole eligibility or discharge. He stated we should be looking at additional pardons to help control the population. Justice Hardesty stated you cannot any longer cut the prison budget, a budget already under budgeted.

Justice Hardesty noted at the last session of the Legislature a proposal was made (AB 628) that if the prison population went down, they would set aside funds to be presented to the Interim Finance Committee for the purpose of considering alternate program and means for the supervision of these inmates with such programs as Specialty Courts, House Arrest, GPS monitoring and other types of programs. He stated there is no money left and all of that money has been reverted to the state in order to accomplish the budget cuts being made and as a result, inmates who might have been supervised in a far less expensive setting continue to be supervised in the most expensive setting we have in the system, the Nevada State Prison. He stressed to the Board it is important to evaluate the priorities that are being set and to urge the Legislature to recognize that there are alternatives to get them out of the prison system which is the most expensive way to house them. The Commission has made approximately six recommendations to modify the provisions of AB 510 that address eligibility dates, parole and supervision while on parole and provisions to streamline the parole process. He stated no action has been taken with regards to the closing of NSP and two conservation camps as they are outside the Commission's jurisdiction.

In response to Secretary of State Miller's question if any of the ICE inmates that were pardoned have returned, Justice Hardesty responded there is no record that any have returned to the system. Attorney General Masto extended her appreciation for what the Commission is doing and the insight it brings to the Board.

#### IV. Report from Inspector General Regarding Inmate Employment related to Voter Registration Activities and Possible Action Directing further investigation.

Director Skolnik regretted the Inspector General was not available due to an investigation in Clark County that he had to attend regarding an attempted escape. He stated there has been an ongoing investigation since July 31<sup>st</sup> regarding ACORN and the Attorney General's Office is also investigating. Director Skolnik stated he would provide a confidential report to the Board once the investigation was completed. A report was submitted to the Board of Prison Commissioners. [Attachment G.](#)

#### V. Discussion/possible action regarding Department of Corrections' budget reductions.

Director Skolnik stated that the budget was in terrible shape. He noted he has been with the NDOC since 1987 and has never seen the Department funded adequately to perform the job that it is suppose to do. The Department has inadequate relief factors, inadequate staffing patterns, and POST charts have not substantially changed since the 70's. He stated that the Department has institutions that have doubled in the number of inmates in units with no increase in staff in those units whatsoever. The Department has proposed, based upon a 14½ % reduction, the delay of Phase V at HDSP, the closure of NSP and the closure of two conservation camps, Tonopah and Pioche.

Attorney General Masto asked Director Skolnik if the Department did not have to submit a 14½ % cut would we still have the closure of NSP and the two camps. Director Skolnik stated it would but would be done differently. The Department has requested through the State Public Works Board (SPWB) the addition of the upgrading of the core and the addition of three units at WSCC which will ultimately house approximately 900 plus inmates. If the time and budget would have allowed, we would have phased out NSP as we phased in the beds at WSCC.

Director Skolnik stated the first unit at WSCC is to be funded in the next Legislative session and will come online in approximately two years and the second and third units two years thereafter. In regards to the comments made about moving Prison 8, he noted that SPWB advised the Department that to relocate that facility from a southern location to a northern location would require reengineering of the entire facility, delaying the project up to two years. He stated when it was recommended that the reentry center not be built at the Florence McClure Womens Correctional Center (FMWCC) we had to pay 4 million dollars to not build because the process was already in place and to fund the relocation of Prison 8 would be extremely higher than that amount. Director Skolnik stated the date of the closure of NSP will be up to Legislature approval. He noted in the Department's budget that July 1<sup>st</sup> is the targeted date. He stated the Department has no authority to close a prison just as we have no control of who comes into prison, how long they stay and when they leave. Director Skolnik also noted the Department has almost no control on how we staff our institutions; those decisions are made outside of the Department.

Attorney General Masto asked Director Skolnik, as the Administrator of the Department of Corrections if his decision on the budget cuts were structurally sound, not only the infrastructure, but the safety of the correctional officers and the public at large, and the needs of the inmates incarcerated. She asked the Director what his long term strategy was. Director Skolnik replied based on the current population numbers, based on the flattening of the population growth, based on the addition of 1,200 beds at HDSP and the addition of 100 beds reopening at NNCC when the renovation of Unit 3 is completed, he believes the Department could cut 14½ % without totally jeopardizing the safety of staff and inmates. Currently, the Department faces the issue of huge staffing vacancies which he has held vacant in an effort to minimize the impact on existing staff should the Legislature choose to close NSP. Director Skolnik stated that he could not, in good conscious, recruit new correctional officers for seven months at a cost of \$8,000 per officer for training and then lay them off, which is the alternative that he is faced with right now. What he is currently doing with staffing will minimize that impact.

Attorney General Masto asked Director Skolnik if he had to cut 20% instead of 14% how he would accomplish that. Director Skolnik stated the Department cannot cut 20% and at that point Mr. Mallory and Mr. Ranft would get their wish because he would not preside over the Department of Corrections if he was forced to make it dangerous for the individuals who work there.



Secretary of State Miller asked how the Department is able to shut down prisons when just a year ago we were at the point of overcrowding. Director Skolnik replied that was a direct result of AB 510. He stated what Justice Hardesty is proposing, and he doesn't disagree with him, is what the Department ought to have. What the Department needs right now is the ability to meet constitutional requirements which is not quite as extensive as the programming that Justice Hardesty would like the Department to have. Director Skolnik stated he would like to have a reentry program throughout the Department and to have adequate staffing throughout the Department. He stated the first Legislative session he went through there was a 28% increase in the Department's budget and obviously that is no longer there.

Attorney General Masto stated she received the report from NIC on their staffing analysis and based on their conclusions of the 2006 audit that was completed by the Nevada Branch Audit Committee is correct in saying that the relief factor is inadequate to staff the posts and based on that report she stated the relief factor has not gotten any better. She stated the Department didn't have enough staff to accommodate the inmates we had now and that it didn't make sense to eliminate and freeze positions at this point. Attorney General Masto stated the numbers just don't make sense and she did not understand it.

Director Skolnik responded noting he provided all of the information regarding the budget and stated he didn't know if he could explain it better than he has before and that when there is no money in the checking account, you cannot write a check and there is no money in the checking account. He stated that the Department can meet the 14% cut as planned but to go beyond that amount, it cannot be safely done. He noted the relief factor has been 1.6 and should be 1.82 and has been inadequate since the 70's. It would require 33 million dollars, minimum, to approach the 1.82 number. Director Skolnik noted former Director Whorton had requested that the 1.82 relief factor be incorporated into the Department's budget and it was denied. He stated as the Administrator of the Department, he will draw the line in the sand at 14% and that he could not comfortably absorb anything beyond that. Director Skolnik stated he could be easily removed and have someone else put in his position who would be glad to cut more. He is in agreement with Justice Hardesty in respect to the overtime analysis. The Department proposed to the Budget Office and to LCB to add ten positions to an institution in the northern region to prove this theory during the next biennium. Secretary of State Miller requested to review the budget prior to the Legislative session. No action was taken on this item.

#### VI. Discussion/possible action regarding State Administrative Regulations.

Secretary of State Miller requested AR 105 and AR 610 be withheld for further discussion to get a better understanding of the public's concerns regarding these ARs. Director Skolnik noted that the issue of consistencies of IPs is difficult because all of the institutions are different due to the layouts and structure of those facilities. Procedures will be different even if they are the same custody level. It is a problem that is being addressed by the Department. He stated he will issue AR 105 as a temporary and bring it before the Board at the next meeting.

Senior Deputy Attorney General Janet E. Traut stated the Department has had IPs in place for many years. Because of concerns regarding the Open Meeting Law while under Director Whorton's administration, certain regulations had to be confidential and not released to the public and there was a need for OPs. Regulations are general policy statements and include many procedures which are at the institutional level and not released to the public. Sr. DAG Janet E. Traut noted during Director Whorton's administration, many regulations were reviewed and the procedures were removed and in doing that, OPs were created statewide to be enforced at all of the institutions. She advised AR 105 should be issued as a temporary regulation. In response to Secretary of State Miller's question, she stated OPs are meant for the whole Department and applies to every institution as an AR and does require the Attorney General's review and IPs do not.

Secretary of State requested that in the future when presenting ARs to have a copy with the strikeouts so the Board can review what changes were made instead of having to pull the old AR to review the changes. Director Skolnik stated that the Department will provide a clean copy along with a copy showing the changes. There were no questions or concerns with the other ARs on the agenda. AR 610 will be withheld pending further review. It was moved to approve the all of the ARs on the agenda with the exception of AR 105 which will be issued as a temporary and AR 610 will be held for consideration at a later date. Motion was seconded and passed unanimously.

VII. Discussion regarding the Legislative Counsel Bureau Access to Health Care audit of the Department of Corrections.

Director Skolnik stated there was a lot of concerns expressed regarding accessibility to medical care in the DOC. There were some minor findings but the ultimate consequence of the audit was the Department is in fact meeting the needs on being responsive to the medical needs of inmates. All of the audit recommendations were accepted by the Department. A copy of this audit report can be obtained through the Legislative Counsel Bureau's website, via email to the Audit Division. The Board had no questions regarding Item VII.

Attorney General Masto commented that the Department provides more programming than other states which was important to know.

IX. Motion to adjourn was approved by unanimous vote. The meeting was adjourned at 3:00 p.m. The next meeting will be in January 2009. No time or date has been scheduled and will be forthcoming.

APPROVED THIS DAY \_\_\_\_\_, MONTH OF \_\_\_\_\_ 2009

BY:

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GOVERNOR JIM GIBBONS

ATTORNEY GENERAL CATHERINE CORTEZ MASTO

SECRETARY OF STATE ROSS MILLER

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