



STATE OF NEVADA  
DEPARTMENT OF CORRECTIONS

Northern Administration  
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**DRAFT**

MINUTES

of the meeting of the

BOARD OF PRISON COMMISSIONERS MEETING

January 13, 2009

The Board of Prisons Commissioners held a public meeting on January 13, 2009, beginning at 2:00 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 Governor Jim Gibbons. The record reflects all members of the Board were present with Secretary of State Ross Miller and Attorney General Catherine Cortez Masto attending in Las Vegas via teleconference.

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, Chief Deputy Secretary of State Nicole Lamboley, and members of the Press. Members of the public in Carson City and Las Vegas were asked to sign in, and the sign-in sheets are attached [Attachment A](#).

II. Acceptance and Approval of Minutes – October 14, 2008. (action required)

The record reflects the Minutes of the October 14, 2008 were approved and passed unanimously. There were no comments or questions from the commissioners.

Governor Gibbons asked that Agenda Item V be moved up before Agenda Item III. There was no objection.

V. Presentation regarding the Department of Corrections' process for collecting court ordered fees, fines, and restitution – Howard Skolnik, Director.

Director Skolnik deferred the question to Lori Bagwell, Deputy Director of Support Services. Deputy Director Bagwell presented an overview of the process. A packet was provided to the Board members. [See Attachment B](#).

Attorney General Masto stated her intent to bring this item on the agenda was to close the loop of the various Boards who communicate with the Department of Corrections (DOC) and to make this Board aware of the conversations and the presentations that were provided to the Administration of Justice. More importantly, why Mrs. Bagwell was asked to present before them. She stated she just wanted the Board to be kept in the loop on what is happening with that particular Commission.

Deputy Director Bagwell stated the Commission was mainly interested in knowing if fines and restitution owed by an inmate was paid before they were released from prison and perhaps DOC could be more aggressive in making collections on behalf of those debts. There was a discussion if the remaining 20 percent that the inmate is paid is allowed to be used for court ordered restitution. There was also a discussion as to whether or not to use the money family members and loved ones send in to pay for the inmate's court ordered debt. Mrs. Bagwell stated she told the Commission there is a fine line as to what impact the general fund would face if the Department started taking more deductions from the money the inmates receive. The money sent to an inmate is a way to help contribute to the inmate's clothing needs, phone debits and to purchase items in the commissary. The Commission basically was looking for ways the Department could collect more money to reduce their court ordered fines. She said the money sent in would be greatly reduced if it indeed went towards paying court ordered fines.

Governor Gibbons opened this item for any public comment.

Valerie Green in Las Vegas wished to comment and read a portion of a letter regarding her brother and the Parole Commissioners. Governor Gibbons stated this was public comment on the issue before the Commission at this point in time and an open general public comment section will be at the end. Ms. Green submitted her letter for the record. [See Attachment C](#). Governor Gibbons then moved to Item III.

### III. Discussion/Possible action regarding the future of and anticipated closure of Nevada State Prison – Howard Skolnik, Director.

Director Skolnik stated this was discussed at the prior two meetings and has been discussed in both the media and in other hearings to date. The possible closure of Nevada State Prison (NSP) has been put on the table as a result of the budget concerns that currently face the state. He stated that was part of the reason to close NSP. Also, part of the reason was the fact that the physical plant at NSP is in need of incredible investment. The physical design of that facility is old. Director Skolnik stated new designs have come up which provide a much more efficient and safe environment for staff and inmates. He stated he spoke with Dr. Jim Austin regarding projections to find out whether or not the closure of NSP would be feasible at the present time given the impact of AB 510. Dr. Austin indicated that at this point in time the previous projections they have done do not hold true any longer. The population has been flat and has been reduced over the past year overall and with the expansion of other beds that we could in fact safely close NSP. Director Skolnik stated the final decision rests with the Legislature. The concern he has is we now have the ability with vacant beds in other facilities to phase back that institution should the Legislature choose to close it which would impact fewer staff.

The Department is currently holding seventy (70) positions open for staff in northern Nevada which has resulted in a lot of overtime and a lot of burden on staff which could be reduced either by phasing back NSP or by opening up recruitment and adding staff to fill those vacant positions should NSP ultimately be closed. Obviously, this means the impact on the local community would be that much greater. He stated no additional units have been closed per the request of the Interim Finance Committee (IFC). Director Skolnik said the Department has the ability at this time to close the cell house and one other unit. The inmates would be absorbed to other institutions around the state.

Attorney General Masto wanted clarification, if indeed the Legislature had asked him not to take any action on NSP until the Department goes back to IFC. Director Skolnik responded that at the first special session there was a resolution which indicated that the Department would not close any facilities without Legislative approval and subsequent to that the staff at the Legislature felt that the resolution also applied to the closure of units.

Secretary Miller asked if the conversation with Dr. Austin phased out the current report. Director Skolnik stated that was correct and the next formal projection was due in March. Based on current situations, Dr. Austin felt the closure of NSP could be accommodated within the Department. The Department holds approximately 15 to 20% of the beds vacant for emergencies, transfers and other factors. There are currently about 200 inmates in those beds above emergency threshold but the Department does have the ability to absorb the balance of inmates at NSP without opening gyms or day rooms to accommodate those individuals.

Secretary Miller asked what additional facilities the Department would need based on Dr. Austin's analysis and projections. Director Skolnik replied he thought the Department will need Phase V at High Desert State Prison (HDSP) which is scheduled to open in September which would provide the Department with additional relief. He could not speak for two or three years from now. He stated statistically and historically crime tends to decrease during severe economic hard times and doesn't start to rise until there is an economic upturn. He anticipates that the Department can probably get to the next biennium with the existing facilities and would not need any additional facilities until after that.

Secretary Miller asked what the status of the facility at Jean was. Director Skolnik replied the Department was touring ICE today and should be finalizing a contract with them this week. That facility will reopen as a detention facility for ICE to be operated by the DOC which will provide additional employment for the southern part of the state. There were no further questions. This item was opened for public comment.

Shawn Murphy, Correctional Officer, NSP, requested to speak. C/O Murphy submitted his comments for the record. [See Attachment D.](#)

David Pffeger, Correctional Officer, NSP, requested to speak. He stated the capital repairs are severely over inflated and the Department needed to contact maintenance who helped bring the units on line in 1981 to testify to get the real facts and figures. C/O Pffeger said the only two people who wanted to close NSP were Director Skolnik and Governor Gibbons. He stated they were not accurate figures. C/O Pffeger submitted his comments for the record. [See Attachment E.](#)

Curt Thomas, Correctional Officer, NSP. Requested to speak. C/O Thomas submitted his comments for the record. [See Attachment F.](#)

Gene Columbus, Nevada Corrections Association, requested to speak. He stated that the maintenance cost should be verified by the Board and members of the Legislature to see what the actual cost would be for repairs at NSP. He stated he disagreed with Director Skolnik's statement that in a bad economy crime goes down. Mr. Columbus stated he thought it was a very risky move to close the institution in bad economic times and that crime can go up. He stated it would remove 15 million from the economy in Carson City if NSP were to close.

Kevin Ranft, Correctional Officer, NNCC, ASFCME Regional Director wanted to thank his members for coming forth today to speak on the behalf of the closure of NSP. He stated they strongly disagree as a union and they ask the Board to respect the IFC legislators and to not close NSP and stop any future housing units from being closed. He asked that the units that were closed to be open again as there is some overflow at the other prisons to refill them.

Secretary Miller asked that Director Skolnik refrain from closing any additional cell blocks and units until the Legislature had the opportunity to review the potential impact in light of the budgetary concerns. He stated that based on Justice Hardesty's presentation at the last Board which indicated that the Commission had concerns of overcrowding in the prison system, operating at 140% of capacity, was a recipe for some serious legal consequences as we have seen in California regarding public safety issues. Secretary Miller made a motion to reject the closure of NSP at this point in time. The motion was moved and seconded by Attorney General Masto. Governor Gibbons voted no on the motion. The motion passed, two to one. There were no other comments or questions.

#### IV. Discussion/possible action regarding the Department of Corrections FY 2010-2011 budget recommendations – Howard Skolnik, Director.

Director Skolnik stated at this point in time, the budget recommendations that are coming as part of the Department's budget submission only include the closures of NSP and the Tonopah Camp (TCC). Pioche Conservation Camp (PCC) has been withdrawn due to the possible impact it would have to that area of the state.

Secretary Miller stated he realized the budget was critical, at least that was the response from the Director when he asked for the supplemental package on the decisions that could be made in light of the requested cuts, however, the constitution and statutes placed certain responsibilities on the Board to have supervision over all matters concerning the state Board of Prisons. He stated at the last meeting of the Board, in which the Governor was absent, Director Skolnik indicated that any cuts greater than 14% would seriously compromise the safety of the Department, its employees and the inmates. Secretary Miller asked if any assurances were given to the Department that the budget about to be released does not exceed cuts greater than 14% over the 2008 base.

Director Skolnik stated he has been assured at this point in time the reductions being proposed to the Legislature are less than the 14.5% that was discussed at the last Board meeting.

Governor Gibbons asked the Board if they wanted to take action on agenda Item IV.

Secretary Miller said that action might be necessary at this point since the budget will be presented shortly to the public and it is a policy decision of the Legislature as well. He requested at the next Board of Prisons meeting the Department present a presentation on the impact of any salary cuts that might be on the table which have been reported in the media on corrections officers and how that may reflect on the Department's ability to maintain the necessary officers in order to run the prison system. He also requested a presentation from the Director on the changes in overtime that Justice Hardesty suggested at the last Board meeting which he indicated resulted in approximately 2.3 million dollars in savings and possibly a recommendation as to how those might be implemented.

Governor Gibbons stated it was the will of the Board no action be taken on Item IV and moved to Item VI.

VI. Discussion/possible action regarding State Administrative Regulations – Howard Skolnik, Director.

Director Skolnik presented Administration Regulation (AR) 105 which was previously brought before the Board at the request of Mr. Miller. He provided a brief history and stated the former Director had rewritten most of the ARs removing any and all procedures from them turning them into Operational Procedures (OPs). These OPs did not require a public hearing and Director Skolnik stated it was not consistent to what he wanted. The Department began to replace many of those regulations to include the OPs which were originally removed. Previously, AR 105 had allowed the Warden independently to create the procedure without any approval beyond the institution. AR 105, now before the Board, allows review by a Deputy Director prior to implementation which would provide for complete consistency between institutions. Director Skolnik stated this would provide consistency between institutions as well as having oversight over the Wardens. He stated there was a question raised if the Attorney General's Office (AGs) should be reviewing Institutional Operational Procedures which he deferred to Senior Deputy Attorney General Janet Traut.

Janet Traut, Senior Deputy Attorney General stated that they had reviewed the history of AR 105 in their office. The discussions that had taken place with former Director Whorton at the time he promulgated the original AR 105 there were no requests for additional staffing from the AGs. She stated that in order to review the Institutional Operational Procedures at each institution would require two additional Deputies Attorney General. There are between 700 and 800 ARs that the AGs do review and each of the institutions has parallel procedures that go along with each of those. She stated that was never discussed. There was some confusion between OPs being the "guts" that came out of the ARs and those were being reviewed at the AGs and the package came together as the regulation with the OPs. As far as those that came out of the institutions there was never any knowledge or understanding at the AGs that those needed to be reviewed as well. She stated they were never requested and operationally, the DOC never really looked at that and under the new Director, many of those procedures that were taken out have been reversed. Ms. Traut stated that this was of unlimited usefulness. AR 105 still provides a Deputy Director review to make sure there is a fit between the regulation and the procedures that give details on how the policy should be carried out.

Director Skolnik stated additionally he just receive concerns from ASFCME today which they raised some issues regarding procedure 320, Mandatory Overtime, at NNCC. He stated the Department will be reviewing that procedure to determine if it is consistent with the regulation. He pointed out for the record that the Fair Labor Standards Act provides no rights or protection for workers who refuse to work mandatory overtime. Federal law has designated that the employer has the right to mandate overtime to his or her employees in any circumstances and additionally there are exceptions from parts of the Fair Labor Standards Act for fire and peace officers working for state and local government. Director Skolnik stated the Department will take a look at the concerns by ASFCME. He felt refusing to work overtime for manned posts that are not filled compromises the safety and security of the institutions and should be addressed.

Governor Gibbons asked for any comments or questions from the public.

Kevin Ranft, ASFCME Local 4041, Regional Director, requested to comment. He stated AR 105 from 1996 clearly stated the Deputy Director of Operations would be responsible for institutions and facilities to ensure items are consistent and would be reviewed by the AGs to ensure the items are consistent and are appropriate. He stated this oversight has not occurred in the past. He urged the Board not to approve AR 105 but if the language under their formal complaint they provided be included, they would have no problem with the regulation as presented. Mr. Ranft stated there are other violations out there but not as extreme. He stated that his officers do not have a problem with overtime but do have a problem with consistency. He asked for documentation from Warden Benedetti so he could make a formal complaint detailing incidents to show there was favoritism, mistakes made and inconsistencies on who could and could not work overtime. Mr. Ranft stated the supervisors didn't follow the policy.

Director Skolnik asked the Board to rescind AR 113 as the Department is no longer using Administrative Officers of the Day; the Wardens have now been charged with that responsibility and will not receive any extra pay to be available 24 hours a day, 7 days a week to handle those issues. The Department is pending the establishment of a Central Command Center. This is part of an effort to save money for the state. There was no public comment.

Director Skolnik presented AR 245 which was modified to become consistent with the possible leasing of the ICE facility to clarify medical charges. There was no public comment.

Director Skolnik presented AR 342 which is a new regulation to clarify and oversee employee representation and witness compensation and how it is addressed.

Mr. Andre' Boles, attorney representing AFSCME, requested to speak. He stated AR 342 has numerous problems; first of all it interferes with the right to representation which is granted both by statute and under the 14<sup>th</sup> Amendment of the Constitution by federal case law. He stated that is putting restrictions on a person's right to representation. He stated you cannot give this kind of discretion to a Warden or Associate Warden. Mr. Boles stated more troublesome was the second page of the AR which calls for the right of an employee, an appellant, and also someone in front of the EMC to call witnesses. He stated it provides for overtime paid to people who are testifying for the AGs but no compensation for those witnesses or appellants for a grievance who are on the other side either representing employees or employees' groups.

Specifically, under Section B, 342.02, which states “A request must be made for a period of time that is reasonably necessary for testimony” and doing that takes the right away from that person or the appellant to use their witnesses or appellant in any way they see fit and thereby get due process, thereby, provide for a fair hearing. Mr. Boles also said that the request of the two weeks in advance notice is not fair. He stated if he was at a hearing he could ask the hearing office for a subpoena to call a witness and the Department is taking that right away. Mr. Boles also disagreed with Section D “the absence of the employee cannot cause undue hardship to the operations of the department” and stated the Department was taking the right of a hearing officer to determine the procedure that is provided in the court and also taking away a civil right of the employee to put his case on and in doing so violates the 4<sup>th</sup> Amendment right of the employee to due process. There were no other public comments.

Director Skolnik presented AR 610 stating it was brought forth before the Board and concerns were made by ACLU. There were conversations between the AGs and ACLU and in conclusion, resulted in no changes to the AR. There were no comments or questions from the members of the Board or the public.

Governor Gibbons asked for a motion and Secretary Miller asked the ARs be brought up individually, Attorney General Masto agreed.

Secretary Miller asked Director Skolnik about the public comments wherein some of the members had filed a formal complaint in regard to AR 105 and if he had an opportunity to review the language of the complaint. Director Skolnik replied he had only received the complaint that morning at 10:00 and only had a chance to review and respond to the issue raised regarding mandatory overtime. Secretary Miller asked if additional review of the detailed complaint could result in reaching a compromise. Director Skolnik replied if the current AR could be kept in place as a temporary in order to have something that formalized OPs, he would be willing to do that.

Secretary Miller moved to defer the action on AR 105 with an understanding that the temporary regulation put in place at the last Board meeting remains in effect. Attorney General Masto seconded. The record reflects the motion passed two to one, the Governor voting no.

Governor Gibbons moved to rescind AR 113. Secretary Miller seconded the motion. The record reflects AR 113 is rescinded. There were no further comments or questions.

The record reflects AR 245 was approved unanimously by the Board. There were no further comments or questions.

AR 342 was presented to the Board. Attorney General Masto asked how this regulation differs from the one it supersedes. Senior Deputy Attorney General Janet Traut stated that 342 was a new regulation with a temporary issued in December by Director Skolnik under the authority of AR 100. The Director of the Department of Personnel, Teri Thienhaus, submitted her recommendations to the Department for this regulation.

Attorney General Masto asked Ms. Traut for her analysis and response to Mr. Boles' comments regarding this AR, particularly about his concerns that it interferes with the right to representation or could this be put on hold for further analysis to be brought back to the Board. Ms. Traut stated there is a temporary regulation in place and this AR can be deferred until the next Board for further review. Attorney General Masto motioned to defer AR 342 until further analysis is completed. Secretary of State Miller seconded the motion. The record reflects AR 342 will be deferred with the temporary AR in place to be brought back for the next Board meeting.

The record reflects AR 610 was approved by the Board. There were no further comments or questions.

VII. Public Comment.

Mr. Andre' Boles, representing on the behalf of ASCFME, asked the Board to place on the agenda for the next meeting an action item for an "up and down" vote to either dismiss the Nevada Department of Corrections' Director Howard Skolnik or in the alternative to call for his resignation. He asked to be allowed to promptly submit a formal complaint that would help the Board in reaching a decision prior to the next meeting.

VIII. Adjournment.

Motion to adjourn was approved by unanimous vote. The meeting adjourned at 3:15 p.m. The next Board of Prison Commissioner's meeting is scheduled for Tuesday, April 14, 2009 at 2:00 p.m.

APPROVED THIS DAY \_\_\_\_\_, MONTH OF APRIL, 2009  
BY:

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GOVERNOR JIM GIBBONS

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ATTORNEY GENERAL CATHERINE CORTEZ MASTO

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SECRETARY OF STATE ROSS MILLER

Recorded and Transcribed by Susan Cochran, Executive Assistant  
Nevada Department of Corrections