

NORTH DAKOTA LEGISLATIVE COUNCIL

Minutes of the

CRIMINAL JUSTICE COMMITTEE

Thursday, November 4, 1999
Prairie Room, State Capitol
Bismarck, North Dakota

Representative John Mahoney, Chairman, called the meeting to order at 1:00 p.m.

Members present: Representatives John Mahoney, Curtis E. Brekke, Ron Carlisle, Rachael Dirud, Bruce A. Eckre, G. Jane Gunter, Gerald O. Sveen, Elwood Thorpe, John M. Warner; Senators Stanley W. Lyson, Carolyn Nelson, Wayne Stenehjem, Darlene Watne

Member absent: Representative Jon Martinson

Others present: See attached appendix

APPROVAL OF MINUTES

It was moved by Senator Stenehjem, seconded by Senator Lyson, and carried on a voice vote that the minutes of the September 16, 1999, meeting be approved as distributed.

CORRECTIONAL SYSTEM STUDY

Chairman Mahoney said under Senate Concurrent Resolution No. 4015, the committee is charged with the study of the adult correctional system, including its functions, responsibilities, funding, and operation. He said in light of the escape of the convicted felon, Kyle Bell, the committee should review issues relating to liability and the placement and transportation of prisoners. He said the Kyle Bell situation falls squarely within the parameters of Senate Concurrent Resolution No. 4015. Chairman Mahoney said the Kyle Bell situation is an extremely difficult topic to address because Kyle Bell is still at large. He said there are two competing interests at play. He said too much disclosure might expose the state to possible liability; however, legislators have certain duties as the legislative branch of government and have an important obligation to the people of North Dakota.

Chairman Mahoney said after reviewing the statutory duties of the Legislative Council, he concluded the committee had only one choice and that was to search for the truth. He said the committee has not only a statutory duty to seek the truth but also a moral obligation to do so. He said if the truth exposes the state to liability, then so be it. He said the committee owes it to the people of North Dakota, but even more so to the family of Jeanna North, to have complete disclosure and open discussion of the issues at this meeting. He said from his own experience as a prosecutor, he knows the living hell that victims and

their families go through before some hideous criminal is put behind bars. For the North family, he said, this was an incredibly long journey and now the nightmare continues. He said the committee's prayers are with the North family and that the number one concern of everyone is that Kyle Bell is put back behind bars where he belongs. He said only then can the North family finally find some peace in their lives.

Chairman Mahoney said the committee should receive information regarding the criteria for the placement of prisoners and how those decisions are made; the alternative modes of transportation of prisoners, with particular attention to the background and usage of TransCor America, Inc. (TransCor) and the United States Marshals Service (USMS); and the standard operating protocol following an escape. He said for the safety of the public, it is important to determine that the state is using the most effective procedures possible for the apprehension of escaped prisoners.

Chairman Mahoney called on Mr. Bill Goetz, Chief of Staff, Governor's office, for comments concerning the escape of Kyle Bell. Mr. Goetz said the capture of Kyle Bell is a top priority issue for the Governor. He said the issues surrounding this case are surrounded by much emotion and that all decisions made regarding the case have been as a result of great deliberation, thought, and foresight. He said the dynamics of the inmate population of the Department of Corrections and Rehabilitation (DOCR) are changing. He said as a result there may be a need for some policy changes and possibly some legislative changes. He said the public's safety is the top concern of the Governor. He said extensive media attention has been given to the recapture of Bell.

Mr. Goetz said the DOCR was notified first of the escape and it was personnel of the DOCR who notified the Governor's office. He said immediate contact was made with New Mexico authorities. He said a number of different law enforcement agencies were involved in the search, including the New Mexico state police, the Federal Bureau of Investigation (FBI), various municipal police departments from New Mexico, the United States Border Patrol, and the border patrol's counterparts in Mexico. He said there also was communication between Governor Schafer and the Governor of New Mexico. He said a meeting

was held in Albuquerque, New Mexico, to determine the full action that was taking place and to offer a demonstration of support and gratitude from North Dakota to New Mexico. He said the media in New Mexico did an excellent job of getting the message out and the effort continues. He said a task force has been formed to work toward the recapture of Kyle Bell. He said those agencies involved in the task force include the North Dakota Highway Patrol, the Bureau of Criminal Investigation (BCI), the FBI, the USMS, and the DOCR. He said "WANTED" posters have gone up nationwide and the case has received national attention on the "Today Show," the "Rosie O'Donnell Show," "Court TV," and "America's Most Wanted." He said the task force has followed up on over 200 leads.

Mr. Goetz said an internal review is being conducted of the procedures and policies used for the transporting of prisoners. He said the review will include prisoner housing, travel, transportation, and compliance with rules and policies. He said the final report of the internal review will be made available to the committee by the middle of December.

In response to a question from Representative Warner, Mr. Goetz said the Governor personally called the North family to inform them of Bell's escape and assured them of ongoing communication. He said measures of protection are being taken.

In response to a question from Representative Carlisle, Mr. Goetz said because of the public safety issues involved in this case, the Governor believed the recapture of Bell should be a law enforcement issue. He said it was important to create a focus on law enforcement and that the Governor believed the Highway Patrol should coordinate the effort. He said the lead investigation is in the hands of the FBI. He said it was not necessary to send representatives of the DOCR and BCI to New Mexico.

In response to a question from Representative Mahoney, Mr. Goetz said the Governor's office is the lead agency in the investigation because of the profile of the individual and because of the sense of urgency. He said there has been a sharing of information among the agencies involved. He said there is one focus among all agencies involved and that is the capture of Kyle Bell. He said no "turf" issues are involved.

Chairman Mahoney called on Ms. Elaine Little, Director, Department of Corrections and Rehabilitation, for comments concerning DOCR's policies and procedures and the escape of Kyle Bell. Ms. Little said the decision to house Kyle Bell in another state was made by the warden. She said the warden determined that for security and safety reasons it would be in the institution's and the state's best interest that Bell be housed in a maximum security prison in another state. Regarding the utilization of TransCor to transport Bell and other prisoners, Ms. Little said until about one year ago, the DOCR understood that

the USMS only transported federal inmates or state inmates destined for a federal institution. She said in 1996 the Penitentiary was faced with the need to transport several state inmates to distant states. She said because the DOCR staff was not extensively trained to do inmate transports involving long distances nor were its vehicles appropriately outfitted for the transport of inmates for long distances, it was necessary to look at other options for long distance transport of nonfederal inmates. When considering the utilization of TransCor and another smaller company, DOCR staff contacted a number of neighboring states to inquire whether they had any experience with either company. All of the states contacted, she said, indicated they had used TransCor and they had not had any problems with the company or with any of the inmate transports. She said TransCor was used by the Penitentiary to transport two inmates in 1996, five inmates in 1998, and six inmates in 1999. Before the escape of Kyle Bell, she said, the Penitentiary had not experienced any problems with TransCor and was not aware that TransCor had any incidents of inmate escapes.

Ms. Little reviewed the procedures followed by the Penitentiary in Kyle Bell's housing and transport. She said following the sentencing of Bell on September 24, 1999, he was transported by Cass County to the Penitentiary where he was stripsearched and each article of clothing that he was wearing was searched. She said when TransCor arrived to transport Bell to Oregon on October 4, Kyle Bell was again stripsearched by TransCor personnel with Penitentiary staff present. She said his clothes and shoes were searched and the shoelaces were removed from his shoes. She said he was dressed in his own shirt and pants and his shoes minus the laces. She said the shoelaces and his belt were placed in a small bag and placed in a storage compartment on the transport van. She said Kyle Bell was handcuffed, leg-ironed, belly-chained, and loaded onto the van. Once TransCor left the grounds of the Penitentiary, she said, the Penitentiary was not aware of the specific route that would be followed to Oregon or how long the transport would take. She said, as is the case in all prison transports, for security reasons transport routes are not divulged to anyone, including the agency that is having the inmate moved.

Ms. Little also reviewed the policy changes made by the DOCR following the Bell escape. She said the DOCR immediately suspended the use of TransCor following notification of Bell's escape. At this time, she said, the DOCR is reviewing other options available for the transport of inmates in the future. She said after reviewing all of the issues involved, the DOCR will need to determine whether the department should transport inmates itself or use a transport service. She said Bell was transported by TransCor in his own clothes. She said although the Penitentiary's policy is that inmates be placed in "prison

blues" for a transport, exceptions to this policy have been made. She said the department's policy for future transports of all medium- or high-security inmates will be that the prisoner must be placed in an orange jumpsuit for all transports outside the institution except when requested otherwise by a court. Ms. Little submitted written testimony, a copy of which is on file in the Legislative Council office.

In response to a question from Senator Watne, Ms. Little said the only policy change that has been made is the one regarding transport of prisoners in orange jumpsuits.

In response to a question from Senator Nelson, Ms. Little said there is not an ongoing contract with TransCor for the transporting of prisoners. Rather, she said, an agreement is made for each transfer.

She said one agreement is signed when TransCor agrees to transport the prisoner and another is signed when the prisoner is actually picked up for transport. She said TransCor carries liability insurance for transports. She said the cost of transporting a prisoner depends on the location to which the prisoner is being transported; however, it would cost two to four times more for the Penitentiary staff to transfer a prisoner.

In response to a question from Senator Lyson, Ms. Little said the actual transport of a prisoner by a transport company is a lengthy process. She said a number of stops are made along the route to pick up other prisoners. She said the transport company is provided with information regarding the prisoner before the company agrees to the transport. She said at the time of the actual transport the company is again provided with the details regarding the prisoner.

In response to a question from Representative Eckre, Ms. Little said none of the transport companies divulge their routes.

In response to a question from Representative Thorpe, Ms. Little said the transport company assumes custody of the prisoner at the time of the pickup.

At the request of Chairman Mahoney, Ms. Little said she would provide to the committee a copy of the TransCor agreement to transport Kyle Bell.

In response to a question from Senator Stenehjem, Ms. Little said TransCor was aware that Bell was a child molester and that he had received a life sentence. She said the agreement probably did not include information that Bell was a flight risk or high risk, but because he was a "lifer" he would be treated as such. She said Bell did not have any money at the time of his escape. She said the handcuffs, leg irons, and waist chains used were the property of TransCor. She said Bell may not have had a key to open the handcuffs. She said handcuffs can be manipulated with the end of a pen.

In response to a question from Representative Carlisle, Ms. Little said a complete stripsearch includes a body cavity search. She said high profile child molesters create disruption within the institution.

She said even with the remodeling of the segregation unit and the use of individual cells, there are opportunities for disruption by those inmates.

In response to a question from Senator Watne, Ms. Little said the final decision to relocate a prisoner is made by the warden.

In response to a question from Representative Sveen, Ms. Little said over the past two to five years there have been times when it has been difficult to find enough segregation cells to meet the demand. She said she would not recommend additional segregation cells at this time.

In response to a question from Representative Carlisle, Ms. Little said the DOCR is in the process of reviewing all options for transporting prisoners, including the use of planes.

In response to a question from Senator Stenehjem, Ms. Little said a reciprocity agreement, known as the Interstate Compact Agreement, is used to exchange problem prisoners between states. She said money is not exchanged between the states.

In response to a question from Representative Mahoney, Ms. Little said the cost to transport Kyle Bell would have been \$1,015. However, payment has not been made. She said the USMS was not used because she understood the USMS only transported federal prisoners or state prisoners to federal prisons. She said TransCor was the only transport service considered for Bell's transport. She said she was first notified of Bell's escape by the warden. She said she then contacted the Governor's office. During the remainder of the evening, she said, she contacted the Cass County State's Attorney's office and the FBI. She said Mr. Brian Berg of the USMS contacted her and offered assistance.

Chairman Mahoney called on Mr. Davie Tucker, Vice President and Chief Operations Officer, TransCor America, Inc., Nashville, Tennessee, for comments regarding the transport and escape of Kyle Bell. Mr. Tucker said the escape was the result of a system breakdown and that public safety issues are taken seriously.

In response to a question from Senator Watne, Mr. Tucker said the company has had two escapes this year, including the Bell escape. He said whether Bell had a key has not been determined. He said none of Bell's prisoner restraints were found. He said the company has appropriate prisoner transport procedures, but those procedures were not followed in this case.

In response to a question from Representative Mahoney, Mr. Tucker said a complete review of policies and procedures has been done. He said the person in charge of the transport had been an employee of the company for four years and was the employee of the year in 1997. He said TransCor is taking this breakdown in policy very seriously. He said there were four guards on the bus for the 12 prisoners.

In response to a question from Senator Lyson, Mr. Tucker said TransCor was aware of Bell's criminal record. He said the company transports prisoners with criminal records worse than Bell's on a daily basis. He said a black box, which is an additional security device that fits over handcuffs, was not used on Bell. He said he is aware of escapes even when black boxes have been used. He said after the escape the remaining prisoners on the bus were searched. He said a portion of a paper clip was found as a result of the search. Mr. Tucker invited the committee to Nashville to observe, firsthand, how the company operates.

In response to a question from Representative Eckre, Mr. Tucker said a violation of company policy occurred when a stop was made and the two guards who got off the bus did not awaken the two guards on the bus who were asleep. He said the company tends to hire guards who have previous security experience and that all guards hired receive training by TransCor. He said the salary of the guards who transport prisoners ranges from \$24,000 to \$45,000-\$50,000 per year plus benefits.

In response to a question from Senator Stenehjem, Mr. Tucker said the buses used for transporting prisoners are departmentalized with steel gates dividing the departments. He said the handcuffs and other restraints used are standard law enforcement restraints.

In response to a question from Representative Thorpe, Mr. Tucker said all guards are full-time employees. He said the staff turnover rate at TransCor is consistent with other correctional facilities nationwide. He said of the four guards involved in the Bell transport, two had been employed by TransCor for four or more years, one had been employed for two years, and the fourth guard had been employed for 18 months. He said he is unaware of any reprimands to these four employees before Bell's escape.

In response to a question from Senator Watne, Mr. Tucker said TransCor has offered its services to the Governor's task force and that they are working with the FBI.

In response to a question from Representative Carlisle, Mr. Tucker said Bell escaped through an emergency vent on the top of the bus. Since no other prisoners' restraints were loose, he said, Bell probably did not receive assistance from another prisoner.

In response to a question from Senator Stenehjem, Mr. Tucker said the escape occurred during the early morning hours and that TransCor was notified of the escape around 3:00 p.m. He said TransCor is augmenting the reward offered by the state, has offered assistance to the FBI, and is providing documents. He said he understands the concerns of the people of North Dakota. He said the actions of these few employees are not indicative of how TransCor does business. He said TransCor has offered to contribute \$10,000 of the \$50,000 reward.

In response to a question from Representative Disrud, Mr. Tucker said TransCor complies with the uniform transport standards of the American Correctional System.

In response to a question from Representative Mahoney, Mr. Tucker said all prisoners are treated as high-risk prisoners.

In response to a question from Representative Sveen, Mr. Tucker said upon a review of the company's policies and procedures, no changes are being made. He said TransCor's policies are good and its employees are well-trained. He said the policies were not followed and the escape was the result of human error.

In response to a question from Senator Nelson, Mr. Tucker said the agreements to transport prisoners varies from state to state. He said TransCor only transports about four or five prisoners per year for North Dakota, but that it transports up to 1,500 per year for some states. He said of the four guards on the bus, two were trained drivers. He said federal Department of Transportation guidelines are followed for drivers and log books are used and checked.

In response to a question from Senator Lyson, Mr. Tucker said TransCor carries a \$50 million comprehensive insurance policy.

In response to a question from Representative Mahoney, Mr. Tucker said the escape occurred around 4:00 to 5:00 a.m. He said headcounts were not done and two more stops were made before the guards realized Bell was gone. He said the two other stops were made at prison facilities during which a prisoner was dropped off and another picked up.

Representative Mahoney said because sex offenders have a high rate of recidivism, TransCor may want to consider increasing its reward amount. Mr. Tucker said liability is a part of doing business.

In response to a question from Senator Lyson, Mr. Tucker said the policies violated were the failure to do a headcount, agent positioning during stops, and the failure to awaken the sleeping guards during the stop.

In response to a question from Representative Mahoney, Mr. Tucker said TransCor is based in Nashville, Tennessee, and is a subsidiary of the Correction Corporation of America.

In response to a question from Representative Eckre, Mr. Tucker said prisoners are stripsearched following an overnight stay at a jail or other correctional facility.

Chairman Mahoney called on Mr. Brian Berg, United States Marshals Service, Fargo, for comments regarding the USMS's procedures for the transporting of prisoners. Mr. Berg said the USMS is the Department of Justice's law enforcement agency. He said the USMS makes 75 percent of all federal arrests. He said the USMS has a policy of assisting local entities to apprehend violent offenders.

Mr. Berg said that on October 13, 1999, he received a request from an assistant state's attorney from Cass County to contact Ms. Little. He said the contact was made. Mr. Berg said the next morning he received a call from Col. Jim Hughes of the North Dakota Highway Patrol who said he would be briefing the Governor and he asked what assistance the USMS could offer. Mr. Berg said he told Col. Hughes that the USMS would need a letter from the Governor asking for assistance. Mr. Berg said he then contacted the Department of Justice in Washington, D.C., and made calls to New Mexico. He said he was told by the New Mexico authorities that to elevate the case to a major or priority case, a letter of request would be needed from the Governor.

Mr. Berg said between 9:00 and 10:30 a.m. he received a call from the chief investigator at the Fargo Police Department. Mr. Berg said the chief investigator told him a BCI plane with a BCI investigator on board would be picking up Mr. Berg and another police department investigator in Fargo to go to New Mexico. Mr. Berg said he was asked if a member of the USMS would join them on the flight. Mr. Berg said the USMS was asked to make the trip to New Mexico because the Bell escape was a national issue and because the USMS's coordination may be needed in New Mexico. He said the USMS has a violent offenders task force agreement with the BCI. Under the agreement, he said, if the BCI has a warrant for an offender in another state, the USMS will work with the BCI on that warrant. Mr. Berg said at that point he briefed United States Attorney John Schneider on the matter and he also contacted the supervisor of the FBI in Fargo. He said Mr. Schneider placed a call to the Governor's office to inform them what was taking place. He said Mr. Schneider was told by the Governor's office that the Governor's office had other plans and that the BCI plane would not be going to New Mexico.

Mr. Berg said although the USMS does not advertise themselves to be a prisoner transport service, the USMS does transport prisoners. He said the USMS transported 45 prisoners in and out of North Dakota over the last 18 months. He said effective October 1, 1999, the USMS charges \$720 to transport a prisoner. Before October 1, the cost was \$650. He said the only escape attempt occurred nine years ago and the person who attempted to escape was killed. He said black boxes are used when necessary. He said in 1998 the USMS transported over 200,000 prisoners nationwide.

In response to a question from Representative Mahoney, Mr. Berg said of the 45 prisoners transported in North Dakota, the majority were coming from other jurisdictions.

In response to a question from Representative Eckre, Mr. Berg said for safety and security reasons, the facility requesting the transfer is not given an exact date when the prisoner will be picked up. He

said the training of the USMS personnel who transport prisoners includes an extensive 16-week course at Quantico, Virginia.

In response to a question from Senator Watne, Mr. Berg said if the USMS had received the request to transport Bell, it would have sent a contract to the state and then would have made a decision based upon the particular case. He said of the 45 prisoners transported, four were done for the DOCR.

In response to a question from Representative Disrud, Mr. Berg said a contract to transport prisoners includes the USMS's and the state's obligations as well as the location from which the prisoner is to be picked up, the location to which the prisoner is to be transported, and the timeframe for the transfer. He said the longest a prisoner has been in their custody is 31 days, but the average is 14 days. He said prisoners are transferred in prison clothing.

In response to a question from Representative Mahoney, Mr. Berg said an unauthorized flight to avoid prosecution (UFAP) warrant was signed by Federal Judge Patrick Conmy the morning after Bell's escape. He said in an escape case time is of the essence and it is critical to begin the investigation while the trail is hot. He said upon the issuance of a UFAP warrant, the FBI becomes the lead investigator in a case. He said upon the request of the Governor, a case may be elevated to major case status.

Chairman Mahoney called on Mr. Bill Broer, Director, Bureau of Criminal Investigation, for comments concerning Kyle Bell's escape. Mr. Broer said the most important objective of all agencies involved is to apprehend Kyle Bell. He said the Highway Patrol, the FBI, the BCI, and the DOCR are all involved in the investigation. He said the BCI has been involved in 40 to 50 escapes over the years. He said he was informed about the Bell escape by a call from the media on the evening of October 13. He said the next morning a command center was activated. He said the BCI has one person assigned to the task force. He said he would suggest the following approach for dealing with escaped prisoners:

1. Immediately notify law enforcement and media.
2. Activate a command center within two hours. The agencies to be involved should include the BCI, the DOCR, the USMS, the FBI, and all other law enforcement agencies with resources.
3. Establish a plan that includes looking at the profile of the inmates and conducting interviews.
4. Travel to the area of the escape to obtain firsthand information and to conduct critical interviews and polygraphs.
5. Work with local law enforcement officials who worked on the original case. These local officials are most familiar with the profile of the

fugitive and can be of tremendous assistance in the investigation.

6. Use all available resources.

Mr. Broer said because time is of the essence, it is important that those involved in this type of situation act quickly. He said it is easy to "Monday morning quarterback" in situations like the Bell case.

In response to a question from Representative Warner, Mr. Broer said the disposition of Bell after his recapture will be a decision of the DOCR and the Governor.

In response to a question from Representative Thorpe, Mr. Broer said many leads have been received, but they are not any closer to apprehending Bell.

In response to a question from Representative Mahoney, Mr. Broer said a representative of the BCI did not go to New Mexico to meet with New Mexico officials. He said there is not a standard protocol for these type of situations, but that the BCI is usually involved. He said he would recommend automatic contacts as a part of the protocol.

In response to a question from Senator Watne, Mr. Broer said a standard protocol can be developed by the agencies involved and legislation probably is not necessary.

COMMITTEE DISCUSSION

Senator Lyson said the committee could discuss the Governor's report, if available, at the next committee meeting.

Senator Stenehjem said the committee may be interested in receiving information on the statutes and policies of other states regarding transporting of prisoners and a copy of the federal Interstate Transfer of Dangerous Criminal Act that has been proposed in Congress.

Chairman Mahoney said it may be possible for several committee members to visit the TransCor America, Inc., facility in Nashville. Mr. Tucker said TransCor would pay for the cost of the trip.

It was moved by Senator Stenehjem, seconded by Representative Eckre, and carried on a voice vote that the meeting be adjourned.

Chairman Mahoney adjourned the meeting at 4:00 p.m.

Vonette J. Richter
Committee Counsel

John D. Olsrud
Director

ATTACH:1