



**NORTH DAKOTA**  
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Doug Burgum, Governor  
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**Report of death:** Ward County Jail Inmate Dustin Jay Irwin, DOB: 07-24-1989

**Reporter:** Steven R. Engen

**Date of Report:** April 3, 2017

This report contains the following information:

- I. Outline of Irwin's time spent in the Ward County Jail from October 3, 2014 to October 6, 2014.
- II. Review of North Dakota Correctional Facility Rules relating to Irwin's time in the Ward County Jail.
- III. Impressions based on the investigation into Irwin's death.
- IV. Conclusions based on investigative material.

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## OVERVIEW:

The Ward County Jail is a county correctional facility in Minot, Ward County, North Dakota. The Ward County Jail is owned and operated by Ward County and Ward County Correctional personnel are Ward County employees.

The Ward County Sheriff is ultimately responsible for the operation of the facility in accordance with N.D.C.C. § 11-15-03(6) and Attorney General Letter Opinion 2005-L-36; the Sheriff of Ward County is in charge of the Ward County Jail. While the facility's day-to-day operations were completed by a Captain, the Sheriff remains in charge of the facility as the administrator.

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### I.

#### Dustin Irwin October 3 - 6, 2014

### OUTLINE:

On October 3, 2014, at 12:00 p.m. Irwin submitted a written request form to go to the hospital. Irwin wrote on the form "Can I please go to the hospital?" "There a lot of things wrong with my back." "Please I'm really sick and need to see someone at the hospital." "Please help me see someone." On October 3, 2014, at 1300 hours Sgt. Heather Polsfut authorized moving Irwin to D block cell 139 for

better observation. Polsfut indicated that Irwin may be going through "DT's". Upon interview of Polsfut, she explained "DT's" means detoxing rather than delirium tremens among the staff of the Ward County Jail. As indicated in the response on Irwin's request Irwin was moved to the D block for closer observation. Throughout the afternoon of October 3, 2014, Irwin was observed vomiting and defecating into the toilet and on himself while in his observation cell lying on a mattress. During the entire afternoon and evening Irwin could be seen constantly flailing and fidgeting and never at a state of rest. The lights are turned off in the observation cell near midnight.

On October 4, 2014, between midnight and noon Irwin was observed moving around his cell. He was vomiting and stumbled at times while he was walking around the cell. At approximated 1700 hours Irwin is allowed out of his cell and sits at a day room table. Shortly after this time Irwin was placed in a cell D-144 with inmate Thomas Schmidt. Video shows Irwin continuing to vomit between 1800 hours and midnight October 4, 2014. On October 4, 2014, at approximately 10:38 p.m., Dustin Irwin was unresponsive. Dustin Irwin's roommate, Thomas Schmidt, pressed the emergency button and requested help. At 10:38 p.m. Correctional Officer Homer and Thomas Schmidt drag Dustin Irwin and the mattress out into the middle of the cell. Dustin Irwin was unresponsive. Dustin Irwin's left arm was in an awkward position. 10:39 p.m. Correctional Officer Homer put on rubber gloves and rolled back Dustin Irwin's eyelids. Dustin Irwin had not moved and was still unresponsive. A female Ward County correctional officer (Sergeant Roxanne Houim) and two (2) male Ward County correctional officers (Conrad Kossan and Christopher Nelson) came into Dustin Irwin cell. Correctional Officer Conrad Kossan administered a sternum rub on Dustin Irwin. Dustin Irwin slightly responded to the sternum rub. At 10:47 p.m. Sergeant Houim told Thomas Schmidt to watch Dustin Irwin and let them know if Dustin Irwin got worse. At 10:50 p.m. Inmate Schmidt is seen lifting Irwin's arm up. Irwin continues to be unresponsive. At 10:50 p.m. Thomas Schmidt was trying to get Dustin Irwin to move. Thomas Schmidt moved Dustin Irwin off of Dustin Irwin's mattress and put the mattress underneath Thomas Schmidt's bunk bed. Dustin Irwin crawled onto the mattresses. Shortly after that the lights were turned off in D-144 observation cell.

The video footage marked October 5, 2014, D-144, 0000-1159 (12 a.m. to 11:59 a.m.) video shows Dustin Irwin in cell D-144. Dustin Irwin continued to drink water and vomit. Dustin Irwin never stopped moving. At 12:50 a.m. on October 5, 2014, during a cell check Correctional Officer Villegas pulled Irwin's mattress out from under Schmidt's bunk and rolled Irwin back on to the mattress. The lights remained off in the observation cell.

The video footage marked October 5, 2014, D-144 12 p.m. to 11:59 p.m., shows Dustin Irwin in cell D-144. Dustin Irwin ate, drank water, vomited, and then cleaned himself with toilet paper. Dustin Irwin never stopped moving.

On October 6, 2014, from 12:00 a.m. on, Dustin Irwin vomited every three (3) to five (5) minutes. At 10:50 a.m. Dustin Irwin stood up, walked towards the cell door, stumbles, stumbles to the sink, stumbles over to the wall, slid his body down the wall, staggered, tried to walk, hit his face on cement wall by hinge portion of the door, and walked into the wall by the window. Thomas Schmidt gets up and walked over to the cell door. Dustin Irwin tried to lie down on Thomas Schmidt's bunk several times. Thomas Schmidt tried to push Dustin Irwin off of Thomas Schmidt's bunk. Thomas Schmidt finally pushed Dustin Irwin off of Thomas Schmidt's bunk. Dustin Irwin threw a punch at Thomas Schmidt. Thomas Schmidt put Dustin Irwin in a headlock. Dustin Irwin and Thomas Schmidt wrestled around on the floor. Thomas Schmidt pressed the emergency button. A correctional officer responded and removed Thomas Schmidt, but never checked on Dustin Irwin.

At 11:49 a.m., a male correctional officer and a female correctional officer picked Dustin Irwin up and assisted Dustin Irwin out of the cell. Captain Erickson had requested Sergeant Ray to prepare Irwin

for transport to Coleharbor with Captain Nason and Sheriff Kukowski. At Coleharbor, Burleigh County would exchange Inmate Kyler Parisien for Irwin. Dustin Irwin was taken to the observation cell in the vehicle sally port where he appears to be hallucinating and had continued erratic body motions. Irwin urinated on the mattress and attempted to push the urine into the floor drain and was reaching into the air. Irwin was standing and walking into walls of the cell and attempting to steady himself with his hands. This cell has a window to the control room and Irwin was looking into the window. Several Ward County Correctional staff entered the cell and witnessed Irwin's erratic behavior. No medical attention is given or requested by correctional facility staff.

## **INFORMATION REVIEW:**

During the investigation staff reported that taking inmates for medical care was not encouraged as when staff took inmates for medical care, remaining staff had to attempt to operate the facility when at times at 150% of capacity. It is noted that no additional staff were added when the facility operated above rated capacity.

During the initial and second interview of Inmate Thomas Schmidt, who was Irwin's cellmate from October 4, 2014 to October 6, 2014, Schmidt stated that he attempted to get help for Irwin on several occasions by pushing the intercom bottom. Schmidt stated that he was told to stop pushing the intercom button and that when staff did respond to Schmidt's calls for assistance it took several minutes. After reviewing video footage of cell D-144 Schmidt can be seen pleading with the control room officer to provide medical assistance to Irwin.

Lights were turned off in observations cell at night.

Inmates were told to observe other inmates. Even then, care was not provided.

No relevant inmate condition information was passed on from shift to shift.

Emergent stimulus response measures were attempted and failed yet no additional care was provided.

Inmates of the Ward County Jail did not receive medical physicals in accordance with North Dakota Correctional Facility Rule 55. On December 2, 2014, medical records for nine inmates were requested from Ward County Captain Erickson for the following information. The request asked for:

1. Date of Admission and release.
2. Date of medical physical.
3. Results of medical physical for each of the nine inmates.

It is noted three of the nine did not receive a tuberculosis (TB) test or the record was lost, one was not within the 14-day requirement and five received the test. No proof was provided that the tests were ever read and each of the nine inmates indicated that if they did get a TB test they do not believe a medical professional ever read it.

No information regarding the requirements of Correctional Facility Rule 55 was provided. Information was provided indicating some inmates had sick call attendance with orders for follow-up. However, no follow-up documentation was provided. In addition some information was provided indicating an Emergency Room visit with directions for follow-up. No follow-up documentation was provided.

During the investigation staff made the following comments regarding inmate health care:

1. "These inmates do not deserve health care they are inmates."
2. "I don't get free healthcare why should they."

A review of the facility medical records indicated a non-organized, incomplete and inaccurate record of substandard health care procedures in the Ward County Jail.

#### **VIOLATIONS:**

The Ward County Jail violated N.D.C.C. § 12-44.1-13 and the North Dakota Correctional Facility Rule 55 by not providing medical physicals or the required elements of the physical to all inmates as required by this rule.

The Ward County Jail violated N.D.C.C. § 12-44.1-13 and the North Dakota Correctional Facility Rule 50 in that the rule requires that a facility transfer an inmate who requires necessary health care beyond the resources available in the correctional facility to a facility where the necessary health care is available. Dustin Irwin required medical care beyond the care available at the Ward County Jail. From October 3, 2014, to October 6, 2014, Dustin Irwin progressively became more ill and was not provided medical care. Dustin Irwin became so ill that he could not speak, walk or respond to the correctional staff charged with his care.

## II.

### Over Population with Lack of Adequate Staff

#### **OUTLINE:**

It is generally accepted correctional practice that a facility is full when the capacity reaches 85% of maximum rated capacity. The Ward County facility has a maximum rated capacity of 104 with an operational capacity of 85% of 104 or 88 inmates.

On October 3, 2014, the population of the Ward County Jail was 144 inmates. This is 40 above the rated inmate capacity or 56 inmates above operational capacity.

On October 4, 2014, the population of the Ward County Jail was 157 inmates. This is 53 above the rated inmate capacity or 69 inmates above operational capacity.

On October 5, 2014, the population of the Ward County Jail was 158 inmates. This is 54 above the rated inmate capacity or 70 inmates above operational capacity.

Inmates in the Ward County Jail have been housed on the floor or dayrooms or doubled in two person cells. This overcrowding has occurred for several months in the Ward County facility. Prior to Irwin's death the facility operated with the same number of staff per shift as when the inmate population was 60.

#### **VIOLATIONS:**

N.D.C.C. § 12-44.1-13(4) requires each correctional facility to maintain sufficient law enforcement officers with correctional training or trained correctional facility staff to perform all functions relating to the intake and booking, security, control, custody, and supervision of inmates.

## **INFORMATION REVIEW:**

During the investigation of the Irwin death several staff stated that no additional staff were added as a result of the increased inmate population. No alternatives to incarceration were attempted. No reduced bond schedules were ever attempted. No contract housing was ever attempted. In a November 5, 2014, interview Ward County Captain Michael Nason stated:

Captain Nason advised Captain Nason told Sheriff Kukowski two (2) years ago that the Ward County Jail was overpopulated with inmates. Captain Nason stated Sheriff Kukowski thought the Ward County Jail would get a pass because other jails were overcrowded too. Captain Nason stated it was not safe at the Ward County Jail.

Captain Nason advised Sheriff Kukowski and Captain Penny Erickson were responsible for jail issues.

In fact, it was not until October 23, 2014, when DOCR Director Leann K. Bertsch issued a letter order to the Ward County Sheriff's Office to immediately reduce the inmate population of the Ward County facility to no more than 104 inmates at any time, any effort was made to reduce the severely overcrowded, understaffed Ward County Jail.

## **CONCLUSIONS:**

The Ward County jail at the point when Irwin was incarcerated was grossly above operational capacity. While the inmate population of jails and regional correctional facilities at times goes above capacity, it is imperative that additional trained staff, resources and alternatives are put in place to make sure essential services are provided and staff and inmates remain safe. In this case, nothing was done. Inmates and staff were not safe as a result of the inaction of the Sheriff.

It is noted that three staff were allowed to attempt to supervise at times 150 inmates in a multi-floor correctional facility. While one staff was charged with watching multiple cameras, answering incoming telephone calls, answering facility intercom calls, dealing with the public at the control room window, and dispatching staff within the facility. All with a control room door that was at most times propped open with multiple staff walking in and out. It is evident that those incarcerated at the Ward County Jail were not being properly supervised.

### **III. Training Deficiency**

## **OVERVIEW:**

Dustin Jay Irwin, DOB: 07-24-1989 was arrested by Ward County Deputy Robert Mahoney on October 2, 2014, for Driving Under Suspension and for two (2) outstanding warrants out of Grand Forks and Burleigh Counties. Dustin Irwin was booked into the Ward County Jail at 12:03 a.m., on October 3, 2014. Dustin Irwin appeared sober and appeared normal. Correctional Officer Devon Sweeney booked Irwin on October 3, 2014. Sweeney has been employed by the Ward County Jail since December 20, 2013. At the time of his booking Irwin informed Officer Sweeney he takes a prescribed pain killer medication for back pain. Irwin completed the booking successfully and the booking officer indicated Irwin did not appear under the influence of drugs or alcohol and did not have

any visible signs of alcohol or drug withdrawal. Irwin was placed on J block cell 361 on third floor of the facility in a two-person cell with two other inmates.

At the date and time of the above-described incident, Correctional Officer Devon Sweeney had not completed an approved correctional officer training course and Ward County officials had not registered Sweeney for the January 2015 Correctional Officer Basic. In addition, Officer Sweeney had not completed any correctional medical training or required orientation training while employed at the Ward County Jail. During her interview on October 27, 2014, Sweeney indicated that three and even four inmates have occupied every two-person cell for the last several months.

### **VIOLATIONS:**

The Ward County Jail violated N.D.C.C. § 12-44.1-13 and the North Dakota Correctional Facility Rule 51 when Devon Sweeney booked in Dustin Irwin prior to completing the requirements of this rule.

### **INFORMATION REVIEW:**

The Ward County Correctional Facility correctional staff have not attended the Peace Officer Standards and Training (POST) Board approved Correctional Officer Basic Training Course required by N.D.C.C. § 12-44.1-01 (10) and Rule 117 of the North Dakota Correctional Facility Rules. The following Ward County Jail employees have been employed by the Ward County Sheriff's Office for more than one year and have not attended North Dakota Peace Officer Standards and Training Board approved Correctional Officer Training:

1. Craig Harvey, employed since June 2012.
2. Michael Engle, employed since May 2013.
3. Christopher Vela, employed since January 2014.
4. Josh Reichenbach, employed since June 2013.
5. Devon Sweeney, employed since December 2013.
6. Trina Cooper, employed since August 2012.
7. Tammy Sattler, employed since July 2014.
8. Christopher, Nelson, employed since March, 2013.
9. Kristin Donahue, employed since May 2013.

During staff interviews, several employees reported they have received very little training. In addition, staff stated training is not a priority. Staff stated there is no time for training because of the extremely high number of inmates.

Correctional facility staff also made the following statements:

1. "We do not watch the cameras unless an inmate is throwing something at them or an inmate is trying to commit suicide".
2. "I think they should give you (Law Enforcement) more bullets so you could shoot more of these people instead of bringing them to jail."
3. "We have the same amount of staff working per shift at 150 inmates as we did when we had 60 inmates."

### **CONCLUSIONS:**

Training of correctional staff did not appear to be a priority for Sheriff Kukowski. Training of County Correctional Staff was available through the ND DOCR as well as the Cass County Sheriff's office as

a result of the 2013 legislative changes to NDCC 12-44.1. While billeting for Ward County staff may have not been available at the ND LETA or at Cass County, training space was available. Between April 2010 and December 2015 the DOCR provided 16 three week Correctional Officer Basic Trainings at the LETA. Ward County sent a total of seven staff during that period, all of which had been employed for over one year. During that period of time the Ward County Jail Captain had made reservations for Ward County staff to attend training. However, on more than one occasion, the Ward County staff did not show up for training.

#### IV.

### Culture of Not Accessing Medical Care for Incarcerated Individuals

#### **OUTLINE:**

Captain Erickson reported in her statement that when she observed Irwin being transported to the observation cell he was unresponsive, head down and “did not look so good”. Erickson stated that she believed Irwin was resisting the officer actions. Erickson stated she called Sheriff Kukowski and advised him of Irwin’s condition. According to Erickson, Kukowski stated he would have Captain Nason speak with Burleigh County about Irwin’s condition. Erickson also reported she told Nason the same information when he arrived at the vehicle sally port. When interviewed on November 5, 2014, Erickson stated staff did not tell her of Irwin’s condition over the weekend and the pass-on log only stated Irwin was detoxing. Erickson stated if she would have had more information she would have sent Irwin to the Emergency Room. Erickson stated more information should have been passed on and that shift leaders are responsible to pass on information. The pass-on log states Irwin may be experiencing DT’s. There is no indication in the pass-on log of Irwin’s continuous vomiting, restlessness or being unresponsive on October 4, 2014. When asked whose responsibility was it on October 6, 2014, to transport or not to transport Dustin Irwin Erickson stated “I could have said he is not fit to transport” Erickson stated she felt Irwin was physically okay to be transported to Coleharbor.

Video then shows Irwin being restrained by several staff and assisted to the cell door. When staff placed restraints on Irwin, he raised his hands and does not appear to be resisting; rather, he appears to be attempting to protect himself and appeared completely disorientated. Irwin can be seen outside the cell but not being placed into the transport vehicle. He can be observed once in the transport vehicle slumped over to the left and appearing to be completely disorientated. Irwin does not appear to be able to speak and only grunted on the in-car audio recording. Ward County Correctional Staff placed a plastic trash liner on the back passenger seat as Irwin was wet from urine. Ward County Deputy Garrison reported he assisted lifting and pulling Irwin into the transport vehicle from the driver’s side.

Captain Mike Nason was interviewed on November 5, 2014. Nason stated he did not receive any information from Captain Erickson regarding Irwin’s condition. Nason stated he did not review any material with Erickson from Irwin’s file. Nason is on a video looking at material in a file with Erickson in the vehicle sally port on October 6, 2014. Nason stated no correctional staff advised him Irwin had been vomiting. Video footage of Nason observing Irwin shows Irwin attempting to swipe urine into a floor drain and kneeling on his hands and knees in the cell. Nason stated that when he observed Irwin in the observation cell he was “actively combative” while having restraints applied. Nason stated he did not know Irwin was in bad medical condition before leaving the Ward County Correctional Facility.

Nason stated he contacted Burleigh County Transport Deputy Jennifer Heinert to verify she still wanted to meet in Coleharbor and indicted Irwin was experiencing some behavioral or mental issues

on Saturday October 4, 2014, and had to be placed in detox. Heinert's report corroborates Nason's statement.

Heinert reported that Nason stated Irwin was fine and just wanted to know if she still wanted to meet in Coleharbor for the prisoner exchange. Heinert's report indicated she wanted to complete the prisoner swap.

On November 6, 2014, Sheriff Kukowski was interviewed regarding his involvement with Dustin's Irwin's transport. Kukowski stated that because of a shortage of transport deputies he agreed to assist in the transport of Irwin. He stated he contacted Captain Erickson to prepare Irwin for transport. Kukowski stated Erickson did not relay anything regarding Irwin's condition during the call or at any time. However, Kukowski stated he could have said to Erickson he would send Nason down to check on Irwin, referring to Erickson telling him about Irwin's medical state. Kukowski stated Captain Nason had told him Irwin was thrashing about and four staff had to restrain him. Kukowski stated he did not see nor did he look at Irwin while he was in the backseat of the transport vehicle. Kukowski stated he may have heard mumbling from Irwin during the transport. Kukowski stated when he and Nason arrived at Coleharbor Irwin could not walk on his own and had to be carried to the Burleigh County transport vehicle by himself and Nason. Kukowski was asked if he was aware of Irwin's condition. Kukowski stated he was not and when asked if Inmate Kyler Parisien stated anything to him regarding Irwin's condition Kukowski stated Parisien stated Irwin looked like he was coming off heroin. Kukowski was asked if he told Parisien "that's what happens when you mix alcohol and meth" and "that he (Irwin) has been that way for three days". Kukowski responded he did not recall if he had that conversation with Parisien. The in-car audio clearly recorded the conversation between Kukowski and Parisien, establishing Kukowski had previous knowledge of Irwin's condition.

During these multiple interactions with staff, no one insisted that Irwin be referred for medical attention.

Captain Nason and Sheriff Kukowski drove right past the Trinity Emergency Care Center when transporting Irwin to Coleharbor.

It is noted that Burleigh County Deputy Jennifer Heinert immediately believed Dustin Irwin was suffering from some sort of medical condition upon receipt of Dustin Irwin from Captain Nason and Sherriff Kukowski. Deputy Heinert indicated that Captain Nason and Sherriff Kukowski stated that Irwin had been in this condition for three days. She then transported Dustin Irwin in an emergency manner to Sanford Health Care in Bismarck, North Dakota.

#### **VIOLATIONS:**

N.D.C.C. § 12-44.1-13(4) requires each correctional facility to maintain sufficient law enforcement officers with correctional training or trained correctional facility staff to perform all functions relating to the intake and booking, security, control, custody, and supervision of inmates.

The Ward County Jail violated N.D.C.C. § 12-44.1-13 and the North Dakota Correctional Facility Rule 50 in that the rule requires that a facility transfer an inmate who requires necessary health care beyond the resources available in the correctional facility to a facility where the necessary health care is available. Dustin Irwin required medical care beyond the care available at the Ward County Jail. From October 3, 2014, to October 6, 2014, Dustin Irwin progressively became more ill and was not provided medical care. Dustin Irwin became so ill that he could not speak, walk or respond to the correctional staff charged with his care.

## COCLUSIONS:

On November 6, 2014, an interview was conducted with Ward County Sheriff Steven Kukowski in reference to Dustin Irwin's death and working conditions at the Ward County Jail.

Sheriff Kukowski advised Sheriff Kukowski did not look at Dustin Irwin or have a conversation with Dustin Irwin during the transport of Dustin Irwin from Ward County to Burleigh County. This is troubling as the primary role of the non-driver official in a two staff transport to maintain supervision and provide care and security for the restrained inmate.

Sheriff Kukowski stated Dustin Irwin was not mobile and had to be carried from the Ward County transport vehicle to the Burleigh County transport vehicle. Sheriff Kukowski stated Dustin Irwin had wet Dustin Irwin's pants. Sheriff Kukowski stated Dustin Irwin looked extremely disorientated.

Sheriff Kukowski stated Dustin Irwin was not transported for medical attention because of dollars and cents.

Sheriff Kukowski advised the Ward County inmate population was so high because of dollars and cents.

During the investigation several staff indicated that Sheriff Kukowski seldom visited the jail and when he did he went to the Captain's office or the control room only. It is common correctional practice for the administrator to complete rounds in all areas of the facility. This brings a calming effect on those incarcerated and provides the administrator with the opportunity for direct observation of the condition those incarcerated and the condition and operation of the facility.

It does not appear that Sheriff Kukowski attempted to make himself aware or was interested in the condition of those incarcerated in the facility, as he did not complete these important correctional practices. This conclusion is further supported by Sheriff Kukowski's not mentioning his name when producing the Inmate PREA video with the DOCR Compliance Monitor. When asked why he only stated he was the Sheriff of Ward County in the video, Kukowski stated, "I don't want them to know who I am."

After reviewing all video available regarding Dustin Irwin from October 3, 2014 to October 6, 2014, reviewing all staff statements, completing an extensive interviews and re-interviews, I offer the following conclusions regarding the operation of the Ward County jail at the time of Dustin Irwin's death:

1. The level of training provided to Ward County Jail staff was inadequate.
2. Training of Ward County Jail staff was not a priority for Sheriff Kukowski.
3. The level of healthcare provided to Ward County inmates at the time of Irwin's death was inadequate.
4. The level of supervision provided to those incarcerated at the Ward County Jail at the time of Irwin's death was inadequate.
5. The population of the Ward County Jail at the time of Irwin's death was well above an operational or safe level.
6. Every level of staff of the Ward County Jail, including the Sheriff, failed to provide proper supervision and care of Irwin.
7. The Ward County Jail would have undoubtedly been closed without the on-site ND DOCR Compliance Monitor that has been in place since January 2015.

8. A culture of not providing proper required health care and needed emergent care is evident at the Ward County Jail. Untrained staff and non-medical staff were authorized to make medical decisions as a result of this culture. An inmate was placed in position of “keeping an eye on” an inmate that a reasonable person would believe was in extreme need of emergent medical care. A reasonable person, not jaded by the culture of not providing medical care, would have sought medical care for Irwin at several points during his period of incarceration.