

TO: Members of the Legislative Commission on Pensions and Retirement

FROM: Lawrence A. Martin, Executive Director

RE: Review of MSRS-Correctional Retirement Plan Membership Provisions and Potential Inclusions and Transfers (Second Consideration)

DATE: September 26, 2003

Introduction

As a topic for Interim consideration, the Commission chair, Representative Steve Smith, has designated a review of the membership provisions of the Correctional State Employees Retirement Plan of the Minnesota State Retirement System (MSRS-Correctional) and consideration of potential proposed inclusions in and transfers to MSRS-Correctional.

The interim project is an outgrowth of proposed pension legislation that was introduced during the 2003 Legislative Session but that was not heard by the Commission, of complaints about the lack of clarity about plan membership eligibility at the newly created prison, the Minnesota Correctional Facility-Rush City, a pattern of Department of Corrections employees taking late career transfers or even demotions to gain MSRS-Correctional Retirement Plan coverage and the corollary State-paid retiree health insurance coverage, and continuing interest by the Department of Corrections to resurrect the administrative coverage transfer provision, Minnesota Statutes 1998, Section 352.91, Subdivision 4, which was repealed in 2000.

This Commission meeting is the second consideration of the topic by the Commission. The Commission staff expects that full Commission consideration on the topic will require three meetings in total.

The first issue memorandum for the Commission interim study provided general background and historical information about the MSRS-Correctional Plan, especially the MSRS-Correctional Plan membership eligibility changes. This Commission staff issue memorandum is the second Commission staff issue memorandum on the topic. The Commission staff issue memorandum reviews the current actual membership of the MSRS-Correctional Plan based on information requested from MSRS and compares the actual membership with the membership inclusion and exclusion provisions of Minnesota Statutes, Section 352.91. The third Commission staff issue memorandum will review the policy implications of the potential requests for inclusion in or transfers to the MSRS-Correctional Plan.

Inclusion and Exclusion Provisions of Minnesota Statutes, Section 352.91

1. In General. Minnesota Statutes, Section 352.91, governs the membership inclusions and exclusions of the State Correctional Employees Retirement Plan of the Minnesota State Retirement System (MSRS-Correctional), augmented by some special legislation and by some administrative transfers during the period 1980-2000.

Unlike general employees retirement plans, such as the General State Employees Retirement Plan of the Minnesota State Retirement System (MSRS-General), the General Employee Retirement Plan of the Public Employees Retirement Association (PERA-General), the Teachers Retirement Association (TRA), the Duluth Teachers Retirement Fund Association (DTRFA), the Minneapolis Teachers Retirement Fund Association (MTRFA), and the St. Paul Teachers Retirement Fund Association (SPTRFA), the membership of the MSRS State Correctional Employees Retirement Plan (MSRS-Correctional) is not described or determined generically, but is restricted to a set of employment positions. Unless a State employee is employed in a specified employment classification, the State employee is not eligible for or entitled to retirement coverage by the MSRS-Correctional Plan. MSRS-Correctional Plan coverage, in addition to gaining the employee entitlement to an earlier normal retirement age and a greater retirement annuity than MSRS-General and being subject to an age 55 mandatory retirement age (conditional, with authority for one year extensions), also gains the employee with State-paid medical insurance coverage for the post-retirement period until eligibility for Medicare benefits at age 65.

2. Inclusions Under Minnesota Statutes, Section 352.91. In ten subdivisions, Minnesota Statutes, Section 352.91, specifies the membership of the State Correctional Employees Retirement Plan of the Minnesota State Retirement System (MSRS-Correctional). The following sets forth the employment positions covered by the MSRS-Correctional Plan:

Statutory Subdivision	Occupational Title	DOC or DHS Facility
Subdivision 1	Corrections Officer 1	Any correctional facility, the State security hospital, or the Sexual Psychopathic Personality Treatment Center
Subdivision 1	Corrections Officer 2	Any correctional facility, the State security hospital, or the Sexual Psychopathic Personality Treatment Center
Subdivision 1	Corrections Officer 3	Any correctional facility, the State security hospital, or the Sexual Psychopathic Personality Treatment Center
Subdivision 1	Corrections Officer Supervisor	Any correctional facility, the State security hospital, or the Sexual Psychopathic Personality Treatment Center
Subdivision 1	Corrections Officer 4	Any correctional facility, the State security hospital, or the Sexual Psychopathic Personality Treatment Center
Subdivision 1	Corrections Captain	Any correctional facility, the State security hospital, or the Sexual Psychopathic Personality Treatment Center
Subdivision 1	Security Counselor	Any correctional facility, the State security hospital, or the Sexual Psychopathic Personality Treatment Center
Subdivision 1	Security Counselor Lead	Any correctional facility, the State security hospital, or the Sexual Psychopathic Personality Treatment Center
Subdivision 2	Maintenance personnel ¹	Any correctional facility, the State security hospital, or the Sexual Psychopathic Personality Treatment Center
Subdivision 2	Member of a trade ¹	Any correctional facility, the State security hospital, or the Sexual Psychopathic Personality Treatment Center
Subdivision 2a	Special Teacher ²	Any correctional facility, the State security hospital, or the Sexual Psychopathic Personality Treatment Center
Subdivision 3a	Security Guards	Any correctional facility
Subdivision 3b	Previously Excluded Employees	Any correctional facility or the State security hospital
Subdivision 3c	Registered Nurse – Senior ²	Any correctional facility or the State security hospital
Subdivision 3c	Registered Nurse ²	Any correctional facility or the State security hospital
Subdivision 3c	Registered Nurse – Principal ²	Any correctional facility or the State security hospital
Subdivision 3c	Licensed Practical Nurse 2 ²	Any correctional facility or the State security hospital
Subdivision 3c	Registered Nurse Practitioner ²	Any correctional facility or the State security hospital
Subdivision 3d	Baker ²	Any correctional facility or the State security hospital
Subdivision 3d	Chemical Dependency Counselor Supervisor ²	Any correctional facility or the State security hospital
Subdivision 3d	Chief Cook ²	Any correctional facility or the State security hospital
Subdivision 3d	Cook ²	Any correctional facility or the State security hospital
Subdivision 3d	Cook Coordinator ²	Any correctional facility or the State security hospital
Subdivision 3d	Corrections Behavior Therapist ²	Any correctional facility or the State security hospital
Subdivision 3d	Corrections Behavior Therapist Specialist ²	Any correctional facility or the State security hospital
Subdivision 3d	Corrections Parent Education Coordinator ²	Any correctional facility or the State security hospital
Subdivision 3d	Corrections Security Caseworker ²	Any correctional facility or the State security hospital
Subdivision 3d	Corrections Security Caseworker Career ²	Any correctional facility or the State security hospital
Subdivision 3d	Corrections Teaching Assistant ²	Any correctional facility or the State security hospital
Subdivision 3d	Dentist ²	Any correctional facility or the State security hospital
Subdivision 3d	Electrician Supervisor ²	Any correctional facility or the State security hospital
Subdivision 3d	General Repair Worker ²	Any correctional facility or the State security hospital
Subdivision 3d	Library/Information Research Services Specialist ²	Any correctional facility or the State security hospital
Subdivision 3d	Library/Information Research Services Specialist Senior ²	Any correctional facility or the State security hospital
Subdivision 3d	Plumber Supervisor ²	Any correctional facility or the State security hospital
Subdivision 3d	Psychologist 3 ²	Any correctional facility or the State security hospital
Subdivision 3d	Recreation Therapist ²	Any correctional facility or the State security hospital
Subdivision 3d	Recreation Therapist Coordinator ²	Any correctional facility or the State security hospital
Subdivision 3d	Recreation Program Assistant ²	Any correctional facility or the State security hospital
Subdivision 3d	Recreation Therapist Senior ²	Any correctional facility or the State security hospital
Subdivision 3d	Stores Clerk Senior ²	Any correctional facility or the State security hospital
Subdivision 3d	Water Treatment Plant Operator ²	Any correctional facility or the State security hospital
Subdivision 3d	Work Therapy Assistant ²	Any correctional facility or the State security hospital
Subdivision 3d	Work Therapy Program Coordinator ²	Any correctional facility or the State security hospital
Subdivision 3d	Phoenix/Pomiga Treatment Behavior Change Program Director ²	Any correctional facility or the State security hospital
Subdivision 3d	Phoenix/Pomiga Treatment Behavior Change Program Assistant Group Supervisor ²	Any correctional facility or the State security hospital
Subdivision 3e	Behavior Analyst I ³	Cambridge Regional Human Services Center
Subdivision 3e	Human Services Support Specialist ³	Cambridge Regional Human Services Center
Subdivision 3e	Mental Retardation Residential Program Lead ³	Cambridge Regional Human Services Center
Subdivision 3e	Psychologist 2 ³	Cambridge Regional Human Services Center
Subdivision 3e	Recreation Program Assistant ³	Cambridge Regional Human Services Center
Subdivision 3e	Recreation Program Assistant ³	Cambridge Regional Human Services Center
Subdivision 3e	Recreation Therapist Senior ³	Cambridge Regional Human Services Center
Subdivision 3e	Registered Nurse Senior ³	Cambridge Regional Human Services Center
Subdivision 3e	Skills Development Specialist ³	Cambridge Regional Human Services Center
Subdivision 3e	Social Worker Senior ³	Cambridge Regional Human Services Center
Subdivision 3f	Behavior Analyst 2 ⁴	State Security Hospital or Sexual Psychopathic Personality Treatment Center
Subdivision 3f	Licensed Practical Nurse ⁴	State Security Hospital or Sexual Psychopathic Personality Treatment Center
Subdivision 3f	Office and Administrative Specialist Senior ⁴	State Security Hospital or Sexual Psychopathic Personality Treatment Center
Subdivision 3f	Psychologist 2 ⁴	State Security Hospital or Sexual Psychopathic Personality Treatment Center
Subdivision 3f	Social Worker Specialist ⁴	State Security Hospital or Sexual Psychopathic Personality Treatment Center

Statutory Subdivision	Occupational Title	DOC or DHS Facility
Subdivision 3f	Behavior Analyst 3 ⁴	State Security Hospital or Sexual Psychopathic Personality Treatment Center
Subdivision 3f	Social Worker Senior ⁴	State Security Hospital or Sexual Psychopathic Personality Treatment Center
Subdivision 3g	Corrections Discipline Unit Supervisor ⁵	MCF-Faribault
Subdivision 3g	Corrections Discipline Unit Supervisor ⁵	MCF-Lino Lakes
Subdivision 3g	Corrections Discipline Unit Supervisor ⁵	MCF-Oak Park Heights
Subdivision 3g	Corrections Discipline Unit Supervisor ⁵	MCF-St. Cloud
Subdivision 3g	Corrections Discipline Unit Supervisor ⁵	MCF-Faribault
Subdivision 3g	Dental Assistant Registered ⁵	MCF-Faribault
Subdivision 3g	Dental Assistant Registered ⁵	MCF-Lino Lakes
Subdivision 3g	Dental Assistant Registered ⁵	MCF-Moose Lake
Subdivision 3g	Dental Assistant Registered ⁵	MCF-Oak Park Heights
Subdivision 3g	Dental Assistant Registered ⁵	MCF-Red Wing
Subdivision 3g	Dental Hygienist ⁵	MCF-Shakopee
Subdivision 3g	Psychologist 2 ⁵	MCF-Faribault
Subdivision 3g	Psychologist 2 ⁵	MCF-Lino Lakes
Subdivision 3g	Psychologist 2 ⁵	MCF-Moose Lake
Subdivision 3g	Psychologist 2 ⁵	MCF-Oak Park Heights
Subdivision 3g	Psychologist 2 ⁵	MCF-Red Wing
Subdivision 3g	Psychologist 2 ⁵	MCF-St. Cloud
Subdivision 3g	Psychologist 2 ⁵	MCF-Shakopee
Subdivision 3g	Psychologist 2 ⁵	MCF-Stillwater
Subdivision 3g	Sentencing to Service Crew Leader ⁵	MCF-Faribault
Subdivision 3g	Sentencing to Service Crew Leader ⁵	MCF-Lino Lakes
Pre-1996 Adminis- trative Transfers	Behavior Analyst 2	State Security Hospital
Pre-96 Adm. Tran.	Behavior Specialist 2	State Sexual Psychopathic Personality Treatment Center
Pre-96 Adm. Tran.	Chemical Dependency Counselor	State Security Hospital
Pre-96 Adm. Tran.	Chemical Dependency Counselor Senior	State Security Hospital
Pre-96 Adm. Tran.	Correctional Canine Officer	Any Correctional Facility
Pre-96 Adm. Tran.	Delivery Van Driver	MCF-Sauk Center
Pre-96 Adm. Tran.	Due Process Supervisor	MCF-Stillwater
Pre-96 Adm. Tran.	General Maintenance Worker	MCF-Faribault
Pre-96 Adm. Tran.	Institution Psychological Services Director	State Security Hospital
Pre-96 Adm. Tran.	Inventory Control Supervisor	MCF-St. Cloud
Pre-96 Adm. Tran.	Medical Laboratory Technician	MCF-Oak Park
Pre-96 Adm. Tran.	Medical Laboratory Technician	MCF-Stillwater
Pre-96 Adm. Tran.	Office Services Supervisor 1	MCF-St. Cloud
Pre-96 Adm. Tran.	Office Services Supervisor 2	MCF-St. Cloud
Pre-96 Adm. Tran.	Psychologist 2	State Security Hospital
Pre-96 Adm. Tran.	Psychologist 2	MCF-Faribault
Pre-96 Adm. Tran.	Psychologist 2	MCF-Lino Lakes
Pre-96 Adm. Tran.	Psychologist 2	MCF-St. Cloud
Pre-96 Adm. Tran.	Radiology Technologist	MCF-Stillwater
Pre-96 Adm. Tran.	Registered Dental Assistant	MCF-St. Cloud
Pre-96 Adm. Tran.	Registered Dental Assistant	MCF-Stillwater
Pre-96 Adm. Tran.	Registered Nurse Supervisor	MCF-Stillwater
Pre-96 Adm. Tran.	Rehabilitation Counselor	State Sexual Psychopathic Personality Treatment Center
Pre-96 Adm. Tran.	Rehabilitation Counselor	State Security Hospital
Pre-96 Adm. Tran.	Social Work Specialist	State Sexual Psychopathic Personality Treatment Center
Pre-96 Adm. Tran.	Social Work Specialist	State Security Hospital
Post-1996 Admin- istrative Transfers	Cook Supervisor	MCF-Moose Lake
Post-96 Adm. Tran.	Occupational Therapist	MCF-Shakopee
Post-96 Adm. Tran.	Psychologist 2	MCF-St. Cloud
Post-96 Adm. Tran.	Registered Dental Assistant	MCF-Lino Lakes
Post-96 Adm. Tran.	Registered Nurse Practitioner	MCF-St. Cloud

¹ *The State employee must be certified by the Commissioner of Employee Relations as being regularly engaged in rehabilitation, treatment, custody, or supervision of correctional inmates or DHS security patients.*

² *The State employee must be certified by the DOC or DHS Commissioner to the MSRS Executive Director to spend at least 75 percent of the employee’s working time in direct inmate or patient contact.*

³ *The State employee must be certified by the DHS Commissioner to the MSRS Executive Director to spend at least 75 percent of the employee’s working time in direct Minnesota Extended Treatment Options program patient contact.*

⁴ *The State employee must be certified by the DHS Commissioner to the MSRS Executive Director to spend at least 75 percent of the employee’s working time in direct patient contact at the Minnesota Security Hospital or at the Minnesota Sexual Psychopathic Personality Treatment Center.*

⁵ *The State employee must be certified by the DOC Commissioner to the MSRS Executive Director to spend at least 75 percent of the employee’s working time in direct inmate contact at the applicable correctional facility.*

July 1, 2003, Active Membership of the MSRS-Correctional Plan

In response to a request from the Commission staff, the Minnesota State Retirement System (MSRS) provided information on the active membership of the MSRS State Correctional Employees Retirement Plan (MSRS-Correctional), identified by occupational title and by the Department of Corrections (DOC) or Department of Human Services (DHS) facility or institution at which the plan member is employed. The

information provided by MSRS is contained in Attachment A (Department of Corrections employees), Attachment B (Department of Human Services employees), and Attachment C (Department of Corrections or Department of Human Services employees without class code or division code). The information is consolidated by the Commission staff into a single compilation covering the MSRS-provided information for the entire retirement plan active membership in Attachment D.

As of July 1, 2003, the most recent date on which specific employee information is available, the active membership of the MSRS-Correctional Retirement Plan was 3,262, for which MSRS provided specific information for 3,254, working in 112 employment classifications in 15 state institutions or facilities. This count compares to similar July 1, 1999, data provided by MSRS of 2,855 state employees in 102 employment classifications working in 15 state facilities or institutions. The facility and installation breakdown of the MSRS-Correctional Plan membership, as of July 1, 2003, and as of July 1, 1999, is as follows:

Department of Corrections	July 1, 1999		July 1, 2003	
	Number of MSRS-Correctional Plan Active Members		Number of MSRS-Correctional Plan Active Members	
Central Office	24	(0.84%)	26	(0.80%)
MCF-Lino Lakes	387	(13.56%)	360	(11.06%)
MCF-Stillwater	423	(14.82%)	439	(13.49%)
MCF-Oak Park Heights	235	(8.23%)	257	(7.90%)
MCF-Shakopee	145	(5.08%)	155	(4.76%)
MCF-Red Wing	150	(5.25%)	155	(4.76%)
MCF-Sauk Center	43	(1.51%)	0	(0.00%)
MCF-Thistledeew/Moose Lake	39	(1.37%)	37	(1.14%)
MCF-Faribault	323	(11.31%)	336	(10.33%)
MCF-St. Cloud	353	(12.36%)	330	(10.14%)
MCF-Willow River	278	(9.74%)	300	(9.22%)
MCF-Camp Ripley	7	(0.25%)	0	(0.00%)
MCF-Rush City	0	(0.00%)	252	(7.74%)
DOC Total	2,407	(84.31%)	2,647	(81.35%)

Department of Human Services	July 1, 1999		July 1, 2003	
	Number of MSRS-Correctional Plan Active Members		Number of MSRS-Correctional Plan Active Members	
St. Peter Security Hospital	264	(9.25%)	284	(8.73%)
Moose Lake Sexual Psychopathic Personality Treatment Center	139	(4.87%)	196	(6.02%)
Cambridge Minnesota Extended Treatment Options Program	45	(1.58%)	126	(3.87%)
Anoka Regional Hospital	0	(0.00%)	1	(0.03%)
DHS Total	448	(15.69%)	607	(18.65%)

The ten occupational classifications with the largest number of MSRS-Correctional Plan members are as follows:

<u>Occupational Title</u>	July 1, 1999		<u>Occupational Title</u>	July 1, 2003	
	Number of MSRS-Correctional Plan Active Members			Number of MSRS-Correctional Plan Active Members	
Correctional Officer 2	1,254	(43.92%)	Correctional Officer 2	1,383	(42.50%)
Correctional Officer 3	334	(11.70%)	Correctional Officer 3	355	(10.91%)
Security Counselor	244	(8.55%)	Security Counselor	306	(9.40%)
Correctional Lieutenant	128	(4.48%)	Correctional Officer 1	113	(3.47%)
Registered Nurse	107	(3.75%)	Correctional Officer 4	112	(3.44%)
Correctional Security Caseworker	87	(3.05%)	Human Services Support Specialist	110	(3.38%)
Correctional Program Therapist 1	47	(1.65%)	Registered Nurse Senior	74	(2.27%)
Human Services Support Specialist	38	(1.33%)	Correctional Security Caseworker	68	(2.09%)
			Career		
Correctional Officer 1	35	(1.26%)	Correctional Program Therapist 2	57	(1.75%)
Security Counselor Lead	<u>32</u>	<u>(1.12%)</u>	Registered Nurse	<u>54</u>	<u>(1.66%)</u>
Total	2,306	(80.77%)	Total	2,632	(80.88%)

The number of MSRS-Correctional Retirement Plan members varies considerably between the two departments and between the various institutions, presumably based on the physical plant situation of the institution and the nature of the programs operated by department and in each institution. The following compares the July 1, 2003, MSRS-Correctional Retirement Plan membership, as reported by MSRS, with the number of inmates/beds as reported by the two departments on applicable websites (generally for August 2002):

Department; Facility	Number of Inmates or Beds	MSRS-Corr. Ret. Plan Members	Ratio Inmates to MSRS-Corr. Members
<u>Department of Corrections</u>			
MCF-Lino Lakes	1,168	360	3.2:1
MCF-Stillwater	1,287	439	2.9:1
MCF-Oak Park Heights	356	257	1.4:1
MCF-Shakopee	397	155	2.6:1
MCF-Red Wing	195	155	1.3:1
MCF-Moose Lake/Willow River/Thistledew	959	337	2.8:1
MCF-Faribault	1,122	336	3.3:1
MCF-St. Cloud	832	330	2.5:1
MCF-Rush City	<u>651</u>	<u>252</u>	<u>2.5:1</u>
DOC Total	6,967	2,621	2.7:1
<u>Department of Human Services</u>			
St. Peter Security Hospital	194	284	0.7:1
Moose Lake Sexual Psychopathic Personality Treatment Center	179	196	0.9:1
Cambridge Minnesota Extended Treatment Options Program	<u>48</u>	<u>126</u>	<u>0.4:1</u>
DHS Total	421	606	0.7:1
Overall Total	7,388	3,227	2.3:1

Authority for MSRS-Correctional Plan Membership Inclusion

The Commission staff has compared the specific occupational titles reported by the Minnesota State Retirement System (MSRS) as being included in the MSRS State Correctional Employees Retirement Plan (MSRS-Correctional) as of July 1, 2003, with the provisions of Minnesota Statutes, Section 352.91, Subdivisions 1, 2, 2a, 3c, 3d, 3e, 3f, and 3g, and prior administrative transfers contained in Commission records. The specific results of that comparison are contained in Attachment E.

Discussion and Analysis of the Statutory Membership Provision and the Actual Current Membership

1. In General. Comparing the current governing statute, Minnesota Statutes, Section 352.91, Subdivisions 1, 2, 2a, 3c, 3d, 3e, 3f, and 3g, and the Commission records of the pre-1996 administrative transfers that failed to comply with the Minnesota Statutes 1998, Section 352.91, Subdivision 4, and of post-1996 administrative transfers under Minnesota Statutes 1998, Section 352.91, Subdivision 4, with the specific membership information on the Correctional State Employees Retirement Plan of the Minnesota State Retirement System (MSRS-Correctional) provided by MSRS, there are instances of MSRS-Correctional Retirement Plan members for whom no detailed information was reported, instances of MSRS-Correctional Plan members who lack any apparent authority for plan inclusion, instances of MSRS-Correctional members for whom plan inclusion authority is unclear or questionable, instances where employees in various occupational titles at the Minnesota Sexual Psychopathic Personality Treatment Center have been included in the plan without that facility being referenced in the applicable statutory provision, instances of facilities with plan members for which no plan inclusion authority exists nor was ever intended, instances where the occupational title is incorrectly recorded and reported, instances where the occupational titles referenced in statute have been renamed without any corrective statutory change proposed by MSRS, the Department of Employee Relations, the Department of Corrections, or the Department of Human Services, and instances where occupational titles specified in statute for plan inclusion no longer appear to have any incumbent members of the plan.
2. Plan Members for Whom No Specific Information was Provided. For the July 1, 2003, actuarial valuation of the MSRS-Correctional Retirement Plan, MSRS reported 3,262 members to the actuary retained by the Legislative Commission on Pensions and Retirement, Milliman USA, but provided specific occupational title and employing facility for 3,254 members. Thus, there are eight MSRS-Correctional Retirement Plan members for whom no membership inclusion authority review is possible. Although the difference in counts could be data reporting error or otherwise readily explainable, MSRS has not provided the full information.
3. Nonexistent Authority for Plan Inclusion. For ten occupational titles, involving 20 current MSRS-Correctional Plan members, no statutory authority appears to exist for their inclusion in the retirement plan. The occupational titles and the facilities or institutions involved are:

<u>Occupational Title</u>	<u>Facilities</u>
Central Services Administrative Services Intermediate	MCF-St. Cloud, MCF-Moose Lake/Willow River, MCF-Red Wing
Central Services Administrative Services Principal	MCF-Lino Lakes
Correctional Inmate Program Coordinator	MCF-Lino Lakes

<u>Occupational Title</u>	<u>Facilities</u>
Groundskeeper Senior	MCF-Red Wing, MCF-Rush City
Human Services Technician	DHS-St. Peter
Library Technician	MCF- Moose Lake/Willow River
Rehabilitation Counselor Senior	DHS-St. Peter
Sales and Services	MCF-Stillwater, MCF- Moose Lake/Willow River
Social Worker Senior	DHS-Sexual Psychopathic Personality Treatment Center
Work Therapy Program Coordinator	DHS-Sexual Psychopathic Personality Treatment Center

The Central Services Administrative Services Intermediate occupational title may be a general renaming of the former Stores Clerk Senior occupational title (see item #8, below), but it is unclear whether the name change also accompanied a change in duties that would bear on the qualification for MSRS-Correctional Retirement Plan coverage, including a change in the extent of inmate contact, the responsibility to intervene in incidents, and the relative employment threat and hazard. The Groundskeeper Senior occupational title may fall into the broader maintenance personnel inclusion provision in Minnesota Statutes, Section 352.91, Subdivision 2, but it is not clear how the Department of Employee Relations and the Department of Corrections are interpreting that provision.

4. Unclear or Questionable Plan Inclusion Authority. For 17 occupational titles, involving 73 current MSRS-Correctional Plan members, the statutory basis for their inclusion in that retirement coverage may be arguable under Minnesota Statutes, Section 352.91, Subdivision 2, as a member of a trade, but the inclusion basis is unclear or questionable without more information on the nature of the specific occupational title. The occupational titles and the facilities or institutions involved are:

<u>Occupational Title</u>	<u>Facilities</u>
Auto Body*	MCF-Faribault
Automotive Technician	MCF-Shakopee
Automotive Mechanic Lead	MCF-Red Wing
Correctional Industries Production Supervisor	MCF-Oak Park, MCF-Stillwater, MCF-Faribault, MCF-St. Cloud, MCF-Moose Lake/Willow River
Correctional Manufacturing Specialist – Engineering & Drafting	MCF-Stillwater
Correctional Manufacturing Specialist – Tool & Die	MCF-Stillwater
Correctional Manufacturing Specialist – Wood	MCF-Stillwater
Correctional Manufacturing Specialist – Upholstery	MCF-Stillwater
Electronics Technician	MCF-Lino Lakes, MCF-Faribault, MCF-St. Cloud
Electronics Technician Senior	MCF-Lino Lakes, MCF-Faribault, MCF-St. Cloud
Graphics*	MCF-Moose Lake/Willow River
Licensing Plant*	MCF-St. Cloud
Light Assembly*	MCF-Shakopee
Light Manufacturing*	MCF-Lino Lakes, MCF-Shakopee, MCF-St. Cloud, MCF-Moose Lake/Willow River
Mechanical*	MCF-Stillwater
Refrigeration Mechanic	MCF-Lino Lakes, MCF-Stillwater, MCF-St. Cloud
Transportation Warehouse*	MCF-Stillwater, MCF-Oak Park

* Indicates that the occupational title does not appear on the only available Department of Employee Relations (DOER) listing of State employment class titles (see www.doer.state.mn.us/lab-rel/pdfs/hay.pdf)

Most or all of the occupational titles appear to relate to the various prison industry programs operating at Minnesota correctional facilities. Prison industry positions have not specifically been referenced in Minnesota Statutes, Section 352.91, except for the 1973 law provision that appears to cover pre-1973 service as a license plant manager, prison industry foreman, prison industry supervisor, or prison farmer supervisor and assistant supervisor positions (see Laws 1973, Chapter 653, Section 40). Tradesmen, special teachers, and maintenance personnel were added to the plan in 1974 (see Laws 1974, Chapter 520, Section 1), but it is not clear that the intended employees for plan inclusion were prison industry employees. The 1974 reference to "tradesmen" was replaced by a reference to "members of trades" in 1986 (see Laws 1986, Chapter 444). In a broad interpretation of what is included in the term "trades," referring to any business or industry, all of the listed occupational titles could be considered members of trades. In a more refined interpretation of what is included in the term "tradesmen," referring to a craftsman, few or none of the occupational titles could be considered members of trades. If the Commission and the Legislature intend to cover the prison industries employees at large, a more straightforward reference to prison industries generally or more specific references to the individual occupational titles in particular should be considered.

5. Unreferenced Minnesota Sexual Psychopathic Personality Treatment Center Positions. There are seven occupational titles at the Minnesota Sexual Psychopathic Personality Treatment Center at Moose Lake, operated by the Department of Human Services, involving 28 current MSRS-Correctional Retirement Plan

members, which lack specific authority for inclusion in that retirement plan coverage. References to the Minnesota Sexual Psychopathic Personality Treatment Center are limited to Minnesota Statutes, Section 352.91, Subdivisions 1, 2, and 3f, specifically, and Minnesota Statutes, Section 352.91, Subdivision 2a, generally. The occupational titles as the Minnesota Sexual Psychopathic Personality Treatment Center for which plan membership inclusion authority is lacking are:

- Psychologist 3
- Recreation Program Assistant
- Recreation Therapist
- Recreation Therapist Senior
- Rehabilitation Counselor Senior
- Registered Nurse
- Work Therapy Assistant

In some cases, employees with the same occupational title at the State Security Hospital at St. Peter, operated by the Department of Human Services, are specifically included in MSRS-Correctional Plan coverage, but employees at the Minnesota Sexual Psychopathic Personality Treatment Center are not, probably because the governing statute has not been fully modified to adjust to the relatively recent creation and evolution of the Moose Lake treatment center.

6. Employment Locale Not Intended for Inclusion. For eight occupational titles at two employment sites, the Central Office in St. Paul for the Department of Corrections and the Department of Human Services hospital at Anoka, involving 27 MSRS-Correctional Retirement Plan members, the employment locale is not specifically or generally referenced in Minnesota Statutes, Section 352.91, and this special retirement plan coverage is unlikely to have been intended in these instances. The occupational titles and the employment locale involved are:

<u>Occupational Title</u>	<u>Locale</u>
Correctional Security Caseworker	DOC-Central Office
Correctional Security Caseworker Career	DOC-Central Office
Correctional Officer 2	DOC-Central Office
Correctional Officer 3	DOC-Central Office
Correctional Officer 4	DOC-Central Office
Correctional Program Therapist 2	DOC-Central Office
Registered Nurse	Anoka-Metro Regional Treatment Center
Sentencing to Service Crew Leader	DOC-Central Office

Correctional Security Caseworkers, Correctional Security Caseworkers Career, Correctional Officers, and Registered Nurses would be eligible for MSRS-Correctional Retirement Plan coverage if they were employed at a correctional facility with an inmate population, but not at the Department of Corrections central office. Sentencing to Service Crew Leaders, if employed at either MCF-Faribault or MCF-Lino Lakes, would be eligible for MSRS-Correctional Retirement Plan coverage under Minnesota Statutes, Section 352.91, Subdivision 3g, but not at the Department of Corrections central office. Correctional Program Therapists are not eligible for coverage at any facility, but the problem may arise from recent Department of Employee Relations occupational title change for which no resulting accommodation in Minnesota Statutes, Section 352.91, has been proposed or pursued (see item #8, below).

7. Incorrect Titles Reported by MSRS. MSRS reports that Benefit Analysts 1, 2, and 3, involving 22 State employees at the Minnesota Sexual Psychopathic Personality Treatment Center at Moose Lake, the State Security Hospital at St. Peter, and the Minnesota Extended Treatment Options Program at Cambridge, are covered by the MSRS-Correctional Retirement Plan. The titles appear to be incorrectly recorded by MSRS or reported by the Department of Human Services and that the title should actually be “Behavior Analyst 1, 2, or 3.”
8. Unaccommodated Occupational Title Changes. Some of the occupational titles identified as lacking any statutory authority for inclusion in the MSRS-Correctional Retirement Plan coverage may be simply instances of occupational titles that may have been renamed without significant duty changes in the applicable employment or that may have been merged with other prior occupational titles into one of the previous occupational titles or into a new occupational title. Three instances where this may have occurred are the Central Services Administrative Services Intermediate, the Central Services Administrative Services Principal, and the Correctional Program Therapist. The Central Services Administrative Services positions appear to be the successor to the prior positions of Stores Clerk Senior and perhaps of Office and Administrative Specialist Senior, which were included under Minnesota Statutes, Section 352.91, Subdivisions 3d and 3f, respectively. It is unclear how closely the employment

duties of the Central Services Administrative Services positions replicate any of the prior incorporated or merged positions. The Correctional Program Therapist position also may be the successor to the Correctional Behavior Therapist position. Presumably, MSRS, the Department of Employee Relations, the Department of Corrections, the Department of Human Services, or all four agencies should be regularly proposing the necessary conforming changes to Minnesota Statutes, Section 352.91, to accommodate occupational title changes when they occur. However, the Legislative Commission on Pensions and Retirement and the applicable standing legislative committees should be carefully reviewing those proposed occupational title change accommodations to assure that any administrative title change does not constitute a weakening of the established minimum qualification standards for MSRS-Correctional Retirement Plan coverage.

9. Obsolete Occupational Titles or Facility References. There are 13 occupational titles referenced in Minnesota Statutes, Section 352.91, for which there are no current incumbent MSRS-Correctional Retirement Plan members as of July 1, 2003. The occupational titles are:

Occupational Title

Chemical Dependency Counselor Supervisor
Corrections Behavior Therapist*
Corrections Behavior Therapist Senior*
Corrections Officer Supervisor*
Corrections Parent Education Coordinator*
Electrician Supervisor
Licensed Practical Nurse 1
Office and Administrative Specialist Senior
Recreation Program Assistant
Registered Nurse-Principal
Social Worker Senior
Stores Clerk Senior*
Water Treatment Plant Operator

** Also indicates that the occupational title does not appear on the only available Department of Employee Relations (DOER) listing of State employment class titles (see www.doer.state.mn.us/lab-rel/pdfs/hay.pdf)*

There are also five instances where there is no incumbent with current MSRS-Correctional Retirement Plan coverage in an occupational title in a particular facility or institution specified in Minnesota Statutes, Section 352.91, Subdivision 3g. the instances are:

<u>Occupational Title</u>	<u>Specified Facility Without Incumbent</u>
Corrections Discipline Unit Supervisor	MCF-St. Cloud
Psychologist 2	MCF-Moose Lake/Willow River
Psychologist 2	MCF-Red Wing
Sentencing to Service Crew Leader	MCF-Faribault
Sentencing to Service Crew Leader	MCF-Lino Lakes

Where the title or facility reference is incorrect or has become obsolete because the occupational title no longer is actually used, the employment position in the facility has been eliminated, or the duties assigned to the position have changed sufficiently enough that the need for a particularly vigorous employee that initially gave rise to the special retirement coverage has been eliminated, or if the current position vacancy is unlikely to be filled in the near or intermediate term, the statutory references should be eliminated.

10. Additional Comments. The current procedures for adding or eliminating occupational titles and positions to MSRS-Correctional Retirement Plan coverage are so frail or faulty that they actually do not constitute a true system. The following represent Commission staff observations about the current procedures for handling the inclusion or exclusion of State employees from MSRS-Correctional Retirement Plan membership.
- a. No Process to Accommodate New Facility Creation. As the recent creation of the MCF-Rush City facility demonstrates, no occupational positions at a new correctional facility automatically have MSRS-Correctional Retirement Plan coverage beyond correctional officers, maintenance employees, members of trades, and special teachers. Individuals who are not in one of those four groups and who are covered by the MSRS-Correctional Retirement Plan at one facility will be unwilling to make lateral or promotional transfers from an existing correctional facility to a new correctional facility because the transfer would leave the retirement coverage issue in flux. Unless a new Department of Human Services institution is labeled a “security hospital,” current law does not automatically include MSRS-Correctional Retirement Plan coverage even for persons employed as security

counselors. When key staffing plans are formulated prior to the building of a new correctional facility and when a new correctional facility becomes fully operational, the Department of Corrections should be obligated to forward the necessary proposed legislation addressing the retirement coverage issues at a new facility. A similar requirement should be imposed upon the Department of Human Services in the event of the creation of a new institution comparable to the State Security Hospital or the Minnesota Sexual Psychopathic Personality Treatment Center.

- b. No Process to Accommodate Facility Changes. Because of the physical plant circumstances of the various facilities and institutions currently covered by the MSRS-Correctional Retirement Plan, it appears that some of the occupational titles which are actually covered by the special retirement plan differ from institution to institution. As the physical plant of facilities changes or is remodeled, the extent and nature of inmate contact and the severity of risk experienced by some MSRS-Correctional Retirement Plan members will likely change, but those changes do not automatically get forwarded to the Legislature for the consideration of revisions in Minnesota Statutes, Section 352.91.
- c. No Process to Handle Position Title Changes. Although occupational titles will have consequences for retirement plan coverage in some instances, changes in occupational titles appear to happen for reasons unrelated to retirement coverage considerations. If the affected agencies, the Department of Corrections, the Department of Human Services, the Department of Employee Relations, and MSRS do not continually monitor these changes and forward the necessary proposed administrative correction legislation, Minnesota Statutes, Section 352.91, will become obsolete or inaccurate in a relatively short time. Testimony could be solicited from each agency about its sense of its responsibilities in this regard and its future plans to assist in keeping Minnesota Statutes, Section 352.91, more current and accurate.
- d. No Process to Handle Position Duty or Hazard Changes. To the best understanding of the Commission staff, the last comprehensive review of the various Department of Corrections or Department of Human Services employment positions potentially open to MSRS-Correctional Retirement Plan coverage occurred in 1995, preceding the major 1996 MSRS-Correctional Retirement Plan coverage expansion. Before the repeal of the administrative transfer provision (Minnesota Statutes 1998, Section 352.91, Subdivision 4) in 2000, each department had a process for considering coverage transfer requests and did review requests for transfers as they were forwarded, but it is not clear that either the Department of Corrections or the Department of Human Services periodically reviewed the existing MSRS-Correctional Retirement Plan covered positions to ascertain whether or not they continued to meet the inmate or patient contact and other requirements that initially gave rise to the special retirement coverage. Some regularized reappraisal of how each MSRS-Correctional Retirement Plan covered position meets the eligibility requirements would give policymakers more confidence that the retirement plan accomplishes its purpose at the most economical cost.
- e. No Current Process for Forwarding Additional Positions for Coverage. With the repeal of Minnesota Statutes, Section 352.91, Subdivision 4, in 2000, the Department of Corrections and the Department of Human Services ended their internal programs for processing requests for additions to coverage by the MSRS-Correctional Retirement Plan. The two departments have discussed attempting to resurrect the administrative transfer authority. The departments have declined to implement the Commission staff suggestion that they convert their old Minnesota Statutes 1998, Section 352.91, Subdivision 3, administrative transfer evaluation process into a process for periodically forwarding department legislative requests for adding new occupational titles to the plan membership. Their current reluctance to reformulate the prior evaluation process appears to lie in a distrust of the legislative process and a fear that employees with undeserving circumstances could gain MSRS-Correctional Retirement Plan coverage by a Commission, a standing committee, or a Senate or House floor amendment, as did the Phoenix/Pomiga Treatment/Behavior Change Program employees in 2000.

Conclusion

After evaluating the current MSRS-Correctional State Employees Retirement Plan membership as of July 1, 2003, in comparison to Minnesota Statutes, Section 352.91, the Commission staff believes that there is either intentional or unintentional noncompliance with the statute and the plan membership shows every probability of further deviations from the statutory requirements of the plan and the legislative intent behind the plan

because of the structural defects that exist in the process of actually determining the plan membership. As the plan membership further departs from a clear statutory delineation of who is included and who is not, employee dissatisfaction is likely to grow and the plan will likely create future issues for eventual, more difficult, legislative resolution.

The Commission should request that the Minnesota State Retirement System, the Department of Employee Relations, the Department of Human Services, and the Department of Corrections review Attachment E, identify any instances where the agency believes that the Commission staff incorrectly analyzed the authority for current MSRS-Correctional Retirement Plan coverage, and report their results to the Commission staff with any supporting documentation, including informal Attorney General's opinions. Based on that agency review and response, the Commission staff will refine the analysis presented in Attachment E and the issue memorandum.

The Commission should also consider, as part of its third consideration of the topic, scheduling testimony from the Department of Corrections, the Department of Human Services, the Department of Employee Relations, and MSRS about their view of current compliance with Minnesota Statutes, Section 352.91, deficiencies in that statute, and their recommended coverage changes, including additional personnel at the Minnesota Correctional Facility–Rush City. Additionally, the Commission should consider scheduling testimony from the affected employee groups for their views and recommendations. Based on those reactions, the Commission will be better able to handle the various requests for MSRS-Correctional Retirement Plan coverage additions or changes for the 2004 Legislative Session.