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August 5, 2014

**ATTORNEY-CLIENT PRIVILEGE AND
CONFIDENTIAL**

Michael Kenney
Director
Department of Correctional Services
P.O. Box 94661
Lincoln, NE 68509-4661

Re: Workplace Investigation

Dear Director Kenney:

On July 18, 2014, the State of Nebraska retained Jackson Lewis, P.C., to conduct a workplace investigation of potential errors in inmate sentencing calculations following the February 8, 2013, decision of the Nebraska Supreme Court in *State v. Castillas*. The information below is a summary of our investigation and findings.

I. SCOPE OF INVESTIGATION

On February 8, 2013, the Nebraska Supreme Court issued a decision in *State v. Castillas*. In the *Castillas* decision, the Nebraska Supreme Court set forth a different method of calculating inmate mandatory release dates from that employed at that time by the Nebraska Department of Correctional Services ("NDCS").

We understand there is some question as to whether court decisions issued as early as 2002 may have placed NDCS employees on notice that the method they were using to calculate mandatory release dates was incorrect. However, the scope of our investigation was limited to circumstances and actions taking place on or after February 8, 2013. To the extent the State of Nebraska would like Jackson Lewis, P.C. to perform an additional investigation into circumstances and actions taking place from 2002 to February 8, 2013, we anticipate this investigation would take no less than four weeks in order to review relevant electronic records and interview all witnesses involved.

II. DETAILS OF INVESTIGATION

At the outset of our investigation, we met separately with Michael Kenney, Director of the Department of Correctional Services, and with David Cookson, Deputy Attorney General, to discuss our services and the scope of our investigation.

A. Email Searches

We also requested that Brenda Decker, Chief Information Officer for the State of Nebraska, provide us with all emails meeting certain relevant search criteria for the following employees:

Jeannene Douglass, Linda Willard, George Green, Kyle Poppert, Sharon Lindgren, Kathy Blum, Larry Wayne, Mickie Baum and Nikki Peterson.

Our search criteria included the following:

- 1) from February 8, 2013 to the present, all email correspondence from Willard to the NDCS employees listed above, and
- 2) from February 8, 2013 to the present, all email correspondence sent or received by the individuals listed above containing any of the following words or phrases in the title, body or any attachment: "Castilla," "mandatory minimum" & "calculat!;" "mandatory minimum" & "supreme court;" "supreme court" & "calculate!" & "sentenc!".¹

Jason Meyer, Systems Administrator for the Office of Chief Information Officer ("OCIO"), ran the searches we requested and placed the responsive documents on a USB drive. OCIO was able to produce all emails except those for Jeannene Douglass and Linda Willard. Jeannene Douglass' email files were deleted sometime after her retirement pursuant to the State records retention schedule. As such, we reviewed Jeannene Douglass' emails meeting the same search criteria which were "journalled" in the NDCS system.

With regard to the emails of Linda Willard, at the request of the Attorney General's Office, OCIO produced to the Attorney General's Office Willard's emails meeting our search criteria. The Attorney General's Office reviewed those emails for attorney-client privilege and confidentiality issues before providing them to us. Two Jackson Lewis attorneys reviewed all of the emails provided by OCIO and the Attorney General's Office to determine their relevance to this investigation.

B. Witness Interviews

We also interviewed the following individuals:

¹ An exclamation point in this context indicates we requested all versions of the word in question. For example, "calculate!" indicates we requested calculate, calculates, calculation, calculations, etc.

Linda Willard, George Green, Kyle Poppert, Sharon Lindgren, Kathy Blum, Larry Wayne, Mickie Baum, Nikki Peterson, Ginger Schurter, Bob Houston and Michael Kenney.²

All interviews other than Linda Willard were conducted in person. Ms. Willard was interviewed by phone. Chad Richter and Sarah Millsap both participated in each interview. Prior to each interview, we read the witness a written statement. A copy of that written statement is enclosed as Exhibit B.³

We also stated to George Green, Sharon Lindgren, Kathy Blum and Linda Willard that the State of Nebraska did not waive its attorney-client privilege with them for the purpose of our investigation. As such, we asked that these attorneys not provide us with any privileged communications. We also advised all witnesses not to provide us with the content of any privileged communications they may have had with George Green, Sharon Lindgren, Kathy Blum or Linda Willard. To the best of our knowledge, no witness provided us with information subject to the attorney-client privilege between the State of Nebraska and its attorneys.

Each witness voluntarily signed a written witness statement following his or her interview.⁴ The statements were prepared by Jackson Lewis, P.C., based on notes from the interview of each witness. Each witness was provided the opportunity to edit his or her statement in person and to make any changes he or she chose before signing. All signed witness statements are enclosed with this report. Jackson Lewis, P.C. retained the edited drafts of any statements to which witnesses made changes. Those drafts are not provided with this report but are available upon request.

C. Other Analyses

We also analyzed the State of Nebraska's Personnel Rules, as well as NDCS Administrative Regulations regarding Employee Discipline, Legal Services and Inmate Records Management. We also reviewed the organizational charts for the NDCS Legal Division and Records Management Division, as well as meeting minutes and draft meeting minutes for the October 31, 2013, meeting of the NDCS Sentencing Committee. Finally, we analyzed the *Castillas* decision and internal NDCS memoranda to clarify the difference between the Court's calculation method in *Castillas* and the practice of NDCS at the time.

III. SUMMARY OF FACTS

At the conclusion of our investigation, based on the credible evidence we gathered, we find the relevant facts to be as follows. On February 8, 2013, the Nebraska Supreme Court issued a decision in *State v. Castillo*, 826 N.W.2d 255 (2013). Early that morning, Assistant Attorney General Linda Willard ("Willard") sent an email to NDCS Records Manager II Jeannene Douglass ("Douglass") and NDCS Records Administrator Kyle Poppert ("Poppert") with a copy of the *Castillas* decision attached.

² Despite multiple telephone calls, Jeannene Douglass ultimately refused to participate in our investigation. A copy of our letter to Ms. Douglass' confirming her refusal to cooperate is included as Exhibit A.

³ We did not investigate whether criminal conduct occurred. Witnesses were not provided *Garrity* warnings and were not advised their statements could be used in a criminal proceeding of any kind.

⁴ Bob Houston is the only witness who chose not to sign a statement. Instead, Houston asked that we prepare a written summary of our interview with him. Houston reviewed that summary and had the opportunity to edit the summary but made no changes to it.

(Exhibit C). Willard stated that she wanted to be sure NDCS was calculating sentences in accordance with the Supreme Court's decision.

Throughout the morning of February 8, 2013, Willard and Douglass exchanged a series of emails regarding the *Castillas* decision. (Exhibit C). In those emails, Douglass specifically advised Willard that NDCS was not calculating mandatory release dates in the manner used by the Court in *Castillas*. Poppert was copied on Douglass' email to Willard. Douglass ended her emails with Willard by asking Willard what she thought NDCS should do. Willard did not respond.

Upon receipt of these emails, Poppert spoke with Douglass in person. Douglass told Poppert that NDCS was not calculating mandatory minimums in accordance with the method provided in the *Castillas* case. Poppert asked Douglass to call Willard for clarification.

Willard recalls speaking with Douglass about the *Castillas* case. She recalls that Douglass indicated NDCS was not calculating mandatory release dates using the method set forth in the *Castillas* decision. Willard states that she did *not* agree with Douglass that NDCS should continue calculating sentences in a method that was different from that set forth in *Castillas*.

On the afternoon of February 8, 2013, Douglass sent an email to NDCS General Counsel, George Green ("Green"), with a copy to Willard and Poppert. (Exhibit D). In her email, Douglass specifically states that NDCS is not calculating inmate discharge dates in the manner prescribed by the Court in *Castillas*. Douglass' email also states that she and Willard discussed the *Castillas* decision and determined NDCS should continue its current method of calculating mandatory release dates. The email clearly states that Willard agrees NDCS should continue its current practice. Douglass' email also specifically states to Green, "I share this with you, Mr. Green, for your input and expertise in this matter."

Willard states that she received Douglass' email and called the NDCS Legal Division to speak with Green. Willard's recollection is that Green may have been out of the office, so she spoke with Sharon Lindgren first. Willard stated that she was upset that Douglass misrepresented her position on the *Castillas* case and NDCS practice, and that she told Lindgren she did not agree NDCS should continue its current practice. Willard recalls Lindgren stating something like, "we know you wouldn't say that."

Willard recalls that she spoke with Green about the *Castillas* case while it was still fresh in her mind. She does not recall the date she spoke to Green. Willard stated that she made Green aware she did not agree with Douglass that NDCS should continue a practice that differed from that set forth by the Court in *Castillas*. Willard felt Green understood the issue and the impact of the *Castillas* case, particularly in light of Douglass' emails. Willard took no further action on the matter after speaking with Green and Lindgren.

Poppert states that he advised Deputy Director of Programs and Community Services, Larry Wayne ("Wayne"), of the situation surrounding the *Castillas* case on February 8, 2013 and that Wayne told him to follow up on the issue. Wayne states that Poppert never advised him of the *Castillas* case or the circumstances surrounding the *Castillas* case. In light of these contradictory statements, it is difficult to assess whether Poppert notified Wayne of the situation. This conflict has little effect on our overall analysis, because Poppert states that Wayne told him to follow up and seek a resolution of the issue.

On February 15, 2013, Green met with Poppert. Green states that he asked Poppert whether NDCS was following the law with regard to sentence calculations and Poppert said yes. Green also states that Poppert agreed to schedule a meeting to discuss the *Castillas* case in more detail. Poppert states that in this meeting Green told him the *Castillas* case did not require NDCS to do anything different because NDCS was not a party to the criminal appeal.

Green later printed off the email he received from Douglass and placed a sticky note on the email with a notation that Poppert would schedule a meeting on the case.

On February 17, 2013, Poppert sent an email to Douglass and Records Manager Ginger Schurter ("Schurter"), asking that they provide him with written response for Green explaining NDCS' current sentence calculation practice, the expected practice under the *Castillas* decision, and why Douglass believed NDCS' present practice was proper. (Exhibit E). On March 11, 2013, Douglass responded to Poppert's request by sending Poppert and Green an email. (Exhibit F). Attached to the email is a 1996 memorandum created by former Records Administrator Ron Riethmuller ("Riethmuller"). The memorandum outlines a calculation for mandatory release dates which is different from the method used by the Court in *Castillas*.

On February 19, 2013, Jon Freudenberg ("Freudenberg"), the Chief of the Attorney General's Criminal Division, sent an email to NDCS Attorney III Kathy Blum ("Blum"), with a citation to the *Castillas* decision. The email says only, "here is the case I was talking about." (Exhibit G). Blum's recollection is that she and Freudenberg were in a meeting discussing sex offender management prior to the Supreme Court's issuance of a decision in the *Castillas* case, and that in casual conversation Freudenberg mentioned the Attorney General's Office had a case before the Supreme Court regarding a criminal appeal that included a sentencing issue. Blum assumes this is why Freudenberg later sent the citation to *Castillas*. Blum did not read the *Castillas* decision. She felt there was nothing to cue her in that it was anything more than a criminal appeal. She stated that she does not have expertise in sentencing issues and is not the normal person at NDCS the Attorney General's Office would contact with important information on sentencing.

On August 6, 2013, George Thompson of the Douglas County Attorney's Office sent an email to Poppert indicating he believed a particular inmate's sentence was calculated incorrectly in light of the *Castillas* decision. (Exhibit H). Poppert does not recall whether he responded to Thompson.

On September 16, 2013, Robert Houston ("Houston") resigned as Director of NDCS. On September 25, 2013, Michael Kenney ("Kenney") was appointed the new Director of NDCS.

Little happened with regard to the *Castillas* case from February 19, 2013, to October 16, 2013. On October 16, 2013, Poppert notified all of the NDCS Records Managers and all NDCS attorneys that he was forming a Sentencing Review Committee. Poppert copied Wayne on his email announcing the committee and Wayne responded via email stating only, "[w]ell done Kyle, thank you." (Exhibit I). Poppert enlisted assistance from NDCS Records Manager I Nikki Peterson ("Peterson") to organize Sentencing Review Committee meetings and to take meeting minutes.

The first and only Sentencing Review Committee meeting was held October 31, 2013, in the conference room next to the Director's office. Peterson sent out a meeting agenda via email prior to the meeting. All of the NDCS Records Managers and NDCS attorneys attended. Poppert also attended the

meeting. Several witnesses indicated the Legal Division sat on one side of the conference table and the Records Managers sat on the other side.

Peterson prepared a form for her minutes on her laptop prior to the meeting. During the meeting, Peterson typed notes into her minute form with her laptop as attendees were speaking. Peterson saved a draft of her minutes to a USB drive on her computer. (Exhibit J).

Peterson returned to her office shortly after the meeting and finalized the minutes. She saved a final draft of the minutes to her computer. (Exhibit K). Peterson sent the final draft of the minutes to Poppert and Records Manager II Mickie Baum ("Baum") to review. Peterson anticipated Poppert and Baum would distribute the minutes to other members of the Committee, but we found no evidence that they did so. Poppert and Baum did not ask Peterson to make any changes to the minutes.

Witnesses' recollection of the October 31 meeting, and the discussion of the *Castillas* case in that meeting, vary a great deal. Green does not recall the meeting in detail. He states that he did not render a legal opinion about the *Castillas* case in that meeting or at any time. He does not recall that anyone was tasked to follow up with regard to *Castillas*. Blum and Lindgren also recall very little about the October 31 meeting. Both recall that they had the impression others had already discussed the case and reached a resolution prior to the meeting. Blum recalls the discussion of the *Castillas* case to have been very short and that Poppert may have asked Green if he had anything more on the case and Green responded that he did not. NDCS Records Manager II Mickie Baum recalls Green indicating he would follow up on the issue. No one recalls an extended discussion about the *Castillas* case, its impact on NDCS or the decision's precedential value.

Peterson's draft meeting minutes attribute certain statements about the *Castillas* case to Green and Lindgren. In particular, Peterson's draft minutes indicate Green stated, "[w]e need to clarify exactly what the Supreme Court's intention is on this, before we as a department act." The draft minutes indicate Lindgren said, "[w]e have been performing calculations our current way for years. We are now aware of this situation, we will act when we are specifically told our current way is wrong and it needs to be changed." (Exhibit J).

Following the October 31, 2013, Sentencing Review Committee meeting, NDCS Records Managers made no changes to their method of calculating mandatory release dates until June 16, 2014. On that day, Director Kenney received a phone call from a reporter with the Omaha World Herald indicating the newspaper intended to print a story indicating NDCS was calculating mandatory release dates in a manner inconsistent with the *Castillas* decision.

We found no evidence indicating anyone advised either Houston or Kenney of the circumstances surrounding the *Castillas* case until the Omaha World Herald's investigation and articles in June 2014. We found no evidence indicating NDCS disregarded the *Castillas* case in order to lower the prison population or for any other strategic reason. We find Douglass' statements in that regard to be completely inconsistent with the statements of all other witnesses on the topic.

IV. IMPACT

We find the statements of Director Michael Kenney to be most relevant in assessing the impact of certain NDCS employees' failure to act on the *Castillas* decision. In his workplace interview and written statement, Kenney said as follows,

"The impact has been dramatic. Public confidence in NDCS is significantly eroded. NDCS employees are fearful and anxious about their positions and the future of NDCS in general. Employees who were in no position to act on the *Castillas* case have been placed in a position in which they feel their jobs may be at risk. Additionally, it appears to me committed and conscientious employees who were in no position to act have been attacked, publically in some cases, due to the apparent negligence of a few responsible parties. I cannot understate the damage this situation has caused our agency. I believe that we may experience repercussions of this issue for months, if not years, to come."

We are also cognizant of the perception that public safety has been affected by NDCS releasing certain inmates early. Though we did not investigate the public safety implications of certain NDCS employees' failure to act, there may have been at least some effect on public safety. In addition, the cost of our investigation is most certainly a consideration in evaluating the impact in this situation.

V. RESPONSIBLE INDIVIDUALS

We find that the individuals listed below had culpability under the circumstances. We note that, with the exception of Jeannene Douglass, the individuals listed below were cooperative in our investigation.

A. Jeannene Douglass

Jeannene Douglass was employed with NDCS for 44 years. She was viewed by many in the agency as an expert in sentencing calculations. She should have known better than to disregard an indication that the Nebraska Supreme Court calculated mandatory release dates using a method different than NDCS. Further, Douglass made statements using the State of Nebraska email system, noting that refusing to adopt the calculation method in the *Castillas* case would "serve the Director's goal of lowering the prison population."⁵ It appears that this statement was not only unsupported, but had the potential to cause significant damage to the agency's reputation. We find credible evidence indicating that Douglass violated several Personnel Rules. However, Douglas retired in 2013.

B. Kyle Poppert

Poppert has been employed by NDCS for 20 years. He has no disciplinary history. As Records Administrator, he is ultimately responsible for errors occurring in the Records Division. According to Administrative Regulation 104.04, NDCS sentencing calculations fall squarely within the purview of the Records Division. Exhibit L.

⁵ Although we were not tasked with investigating criminal activity, we uncovered no evidence indicating State of Nebraska employees acted or failed to act with an intention of reducing the inmate population in Department of Correctional Services facilities.

However, we found Poppert credible in his statements that he sought legal advice from Green on the *Castillas* case and that he relied on Green's advice and his belief that Willard agreed with NDCS current practice, in allowing NDCS to continue its long-standing method for calculating mandatory release dates. Poppert also stated that he brought the *Castillas* case to Wayne's attention and was tasked to follow up and seek a resolution. In his interview, Poppert indicated that he felt alone in attempting to push for a resolution on the *Castillas* case and that seems to be accurate.

Poppert's culpability lies in allowing eight months to pass between the time he requested legal advice on the *Castillas* case in February 2013 and the Sentencing Review Committee meeting in October 2013. Additionally, Poppert should have known that the Sentencing Review Committee did not have authority to decide NDCS would not follow the calculation method set forth in the *Castillas* case. Poppert should have elevated the decision to additional members of the executive team, informed Wayne of the implications involved in disregarding *Castillas* and insisted upon a clear, imminent resolution of the matter.

We find credible evidence indicating Poppert violated 273 NAC § 14.003.03 – Inefficiency, Negligence or Incompetence in Performance of Duties. In evaluating whether discipline is appropriate and, if so, the appropriate level of discipline, the Director should keep in mind that it appears Poppert had no intent to violate the rules and that he was the only NDCS employee who pursued a resolution of the issues surrounding the *Castillas* case. Additionally, Poppert has been a NDCS employee for 20 years with no disciplinary history. However, the impact of Poppert's inaction was substantial. Even if Poppert's statement that he advised Wayne of the situation is true, Poppert admitted that he was instructed to follow up and seek a resolution of the issue. Given the significance of his delay in reaching a resolution, we find credible evidence to support a violation of Section 14.003.03.

C. George Green

On February 8, 2013, Douglass notified Green that NDCS' current method of calculating mandatory release dates was different than that utilized by the Court in *Castillas*. Green met with Poppert approximately a week later and Green states that Poppert reassured him NDCS was following the law. Although Green expected Poppert to schedule a meeting on the issue, Green waited approximately eight months for the meeting to occur and took no action with regard to the *Castillas* case during this time.

Willard states that she spoke to both Lindgren and Green about the *Castillas* case by phone while the case was still fresh in her mind. She believes Lindgren and Green understood what the *Castillas* case stood for and that NDCS was not following the sentencing calculation method set forth by the Supreme Court. Willard stated that she expected Green would take the lead in implementing the calculation method in *Castillas*. We found Willard's statement to be credible. If Willard's statements are accurate, it does appear that she had no further obligation in this matter.

In the October 31, 2013, Sentencing Review Committee meeting, draft meeting minutes indicate Green stated that NDCS needed to clarify the Supreme Court's intention before changing long-standing agency practice. Green does not recall that he, or anyone else, was tasked to follow up on the issue after the October 31, 2013. Green did not follow up to determine the Supreme Court's intention.

In his interview, Green stated that he did not render a legal opinion about the effect of the *Castillas* case at any time. Poppert stated that Green advised him the *Castillas* case was not a directive for NDCS to take action. Green does not recall making this statement. Wayne recalls Green making a similar statement to him in June 2014, when Director Kenney asked Wayne to speak with Green about the case. Wayne also recalls Green stating that, in retrospect, this was probably the wrong way to look at the case. Green took no action with regard to the *Castillas* case after October 31, 2013.

Based on variations in credible witness accounts, there is some question as to whether Green evaluated the *Castillas* case and found that it did not require NDCS to act, or whether Green chose not to evaluate the impact of the case at all. Green stated that he relied on Willard's lack of response to Douglass, as well as the subject matter expertise of Douglass and Poppert, in choosing not to take action on the *Castillas* case. Green noted that sentencing issues fall within the core function of the Attorney General's Office, rather than the NDCS Legal Division. Houston, Lindgren and Blum all agreed with this statement. Green also provided evidence indicating NDCS Records Managers communicate regularly with Assistant Attorneys General on sentencing issues without involving the NDCS Legal Division.

However, assuming Willard's statements are true, she spoke with Green and let him know she did not agree with Douglass that NDCS should disregard the sentence calculation method set forth in *Castillas*. If this is the case, Green cannot rely on Willard's lack of email response as a mitigating factor. Based on the credible evidence we gathered, it appears that Green knew Willard disagreed with NDCS' current method of calculating mandatory release dates.

Additionally, if read and properly evaluated, the language of the *Castillas* decision itself should have alerted Green that NDCS was making a mistake in calculating mandatory release dates. Douglass saw this when she read the decision and brought it to the attention of Green and Poppert. In light of Willard's statements and Douglass' email indicating NDCS was not following the calculation method set forth in *Castillas*, it seems Green should have understood the impact of *Castillas*.

We note that, in Douglass' final email of February 8, 2013, she stated that she was sending the *Castillas* decision to Green for his input and legal advice. Green provided a statement that he did not provide a legal opinion or respond to this email despite Douglass' specific request. Green further stated that he did not bring this issue to the attention of Director Houston or Director Kenney at any point.

Houston's interview statements were particularly enlightening. Houston stated that, as General Counsel and a member of the NDCS executive team, Green had the authority to evaluate the *Castillas* case and, if he found that NDCS was acting in accordance with the decision, to direct that the agency continue its current course. However, Houston stated that if Green evaluated the *Castillas* case and found that NDCS was not acting in accordance with the calculation outlined by the Court, Green had a responsibility to bring that to the attention of the Director. Houston stated that Green did not have the independent authority to decide NDCS would engage in a practice different than that outlined in a Supreme Court decision.

Though attorneys may certainly make mistakes in interpreting cases from time to time, Green was placed in a position of public trust and has two decades of experience as General Counsel. At the very least, Green had an obligation to evaluate *Castillas* in a timely manner and work with subject matter experts to understand its impact. Green also had an obligation to bring the issue to the attention of

the Director immediately, so the Director could make a deliberate decision about how the agency would respond. Even though Green is credible in stating that sentencing issues are not commonly addressed by the NDCS Legal Division, the fact that NDCS's sentencing calculation practice was different from that set forth in a Supreme Court decision should have alerted Green that he must take further action.

We find credible evidence indicating Green violated the following Personnel Rules: 273 NAC § 14.003.01 – Failure to Comply with Federal Laws, State Constitution or Statutes; 273 NAC § 14.003.03 – Inefficiency, Incompetence or Negligence in the Performance of Duties and 273 NAC § 14.003.15 – Acts Which Adversely Affect the Employing Agency's Performance or Function.

In determining the appropriate level of discipline for Green, the Director should keep in mind that Green has been an attorney for NDCS for 27 years and has no disciplinary history. Houston noted that Green has been an employee of "exceptional character." However, as outlined above, the impact of Green's decisions and failure to act is unquestionably great.

D. Sharon Lindgren

Lindgren has been a NDCS attorney for 13 years. Lindgren was also an Assistant Attorney General for 13 ½ years. For a part of her time in the Attorney General's Office, Lindgren worked with sentencing issues.

Lindgren stated that she was not notified of the *Castillas* case until October 31, 2013. Willard stated that she discussed the *Castillas* case with Lindgren by phone shortly after the decision was issued. On October 31, 2013, Peterson's draft minutes indicate that with regard to the *Castillas* case, Lindgren stated, "[w]e have been performing calculations our current way for years. We are now aware of this situation. We will act when we are specifically told our current way is wrong and it needs to be changed." Exhibit J. Lindgren does not recall making this statement and did not read *Castillas* before the meeting.

Had Lindgren read *Castillas*, she may have been uniquely situated to understand its impact and recommend a change in NDCS practice. However, Lindgren noted that in the October 31, 2013 meeting, it appeared to her that others had already discussed *Castillas* and reached a decision not to change the agency's practice. This impression was likely correct and, though she did not say so, it is likely that Lindgren relied on the fact that General Counsel was present in the meeting in deciding not to engage in further evaluation of the case.

We find credible evidence indicating Lindgren violated 273 NAC 14.003.03, Inefficiency, Incompetence or Negligence in the Performance of Duties. In considering whether discipline is appropriate and, if so, the level of discipline to administer, the Director should consider the fact that Lindgren has been an NDCS for 13 years and has no disciplinary history. It does not appear that she intended to violate the rules and she likely relied on Green, Poppert and Willard to reach a resolution with regard to the *Castillas* case.

E. Kathy Blum

Kathy Blum has been an attorney for NDCS for 17 years. She has also worked as a mental health counselor for NDCS. Her areas of expertise generally include inmate religious issues, mental health

issues, Nebraska Equal Opportunity Commission charges, sex offender issues and inmate discipline. She is generally not involved in inmate sentencing issues.

On February 19, 2013, Jon Freudenberg, then Chief of the Attorney General's Criminal Division, sent Blum an email containing a citation to the *Castillas* case. (Exhibit G). Blum recalls that prior to the decision in *Castillas* being filed, Blum was in a meeting with Freudenberg regarding sex offender management. In casual conversation, Freudenberg stated that the Attorney General's Office was handling a criminal appeal involving a sentencing issue. Blum assumes this is why Freudenberg later sent her the citation when *Castillas* decision was filed.

Blum took no action with regard to the *Castillas* case after Freudenberg sent her the citation. She did not read the decision and did not forward Freudenberg's email. Blum stated that there was nothing to cue her in that the decision was anything more than a criminal appeal.

In the October 31, 2013, Sentencing Review Committee meeting, it does not appear that Blum spoke at all about the *Castillas* case. She recalls the discussion of *Castillas* to have been very brief and it appeared to her that others had already discussed the case outside the meeting and made a decision about the course of action to take. Though she did not say so, Blum likely relied on the fact that General Counsel was present in the meeting in choosing not to speak on the *Castillas* case or to take further action.

We found Blum to be credible in her statements that inmate sentencing issues simply did not fall within her area of expertise and that she was not the normal person the Attorney General's Office would contact regarding inmate sentencing issues. However, we find that Blum should have either read the decision when Freudenberg sent it to her, forwarded the citation to someone with more expertise in the area, or at least followed up with Freudenberg to determine why he felt the case was important enough to send.

We find credible evidence indicating Blum has violated 273 NAC 14.003.04, Inefficiency, Incompetence or Negligence in the Performance of Duties. In considering whether discipline is appropriate and, if so, the level of discipline to administer, the Director should consider the fact that Blum has been an NDCS for 17 years and has no disciplinary history. It does not appear that she intended to violate the rules and she likely relied on Green, Poppert and Willard to reach a resolution with regard to the *Castillas* case. Blum's level of culpability seems to be the lowest of the employees involved in this matter.

VI. RECOMMENDATIONS

A. Disciplinary

It is our recommendation that George Green and Kyle Poppert each receive disciplinary actions. Green has the highest level of culpability under the circumstances. In our assessment, we find that Poppert has a more reduced level of culpability. In addition, Sharon Lindgren and Kathy Blum have a lower level of culpability, but their failure to act may warrant a lesser level of discipline. A memorandum discussing comparators and factors to consider in determining the appropriate level of discipline is included with this report. We note that the circumstances involved are very unique and there is a significant lack of true comparators.

We did not recommend a specific level of discipline for each individual, as we believe the Director must consider the information we provided in light of his expectations and the NDCS environment to determine the appropriate level of discipline. We remain available to consult with you, at your request, as to the appropriate discipline warranted for culpable individuals, if any, but we believe the ultimate decision in this regard must be made by the Director as an appointed official.

We note that we found no culpability of either Director Michael Kenney or former Director Bob Houston. It appears neither individual knew, or had any reason to know, about the *Castillas* case or the surrounding circumstances. We see no conflict of interest in the Director determining the appropriate level of discipline, if any, for the individuals involved.

B. Other

In addition to personnel actions, we noted a few systemic issues that should be addressed.

i. Internal Communication

The NDCS Records Division needs a written manual outlining sentencing calculation methods, with citations to appropriate case law, statutes or Attorney General's Opinions. Records Managers are currently applying various legal documents in their sentencing calculations without requesting guidance from the NDCS Legal Division. The Records Division must compile all of its sentencing calculation methods in one place and request approval of those methods by the NDCS Legal Division and the Attorney General's Office.

NDCS employees also need a protocol for requesting a legal opinion from the NDCS Legal Division. In this case, there is too much uncertainty as to whether the Records Division requested a legal opinion from the Legal Division on the *Castillas* case. A more formal process would help both sides know what to expect.

In addition, you mentioned that you have already requested Wayne perform an audit of the sentence calculation practices and procedures of the Records Division. We recommend NDCS conduct these audits periodically, and institute a system of checks and balances to avoid mistakes and ensure legal compliance in the future.

Finally, the NDCS Records Division needs one attorney who is designated to assist with legal issues arising in sentence calculations. Given the number of sentence calculations performed at NDCS each day, that attorney should be available to render an opinion in a timely manner. The attorney may be either an NDCS employee or an employee of the Attorney General's Office, but one attorney should be clearly designated.

ii. Interagency Communication

Though witness accounts vary, it appears there was at least some miscommunication in this case between NDCS and the Attorney General's Office. All of the witnesses we interviewed agreed there is no protocol for the Attorney General's Office to communicate with NDCS on policy issues affecting the agency. It would seem most effective for the Attorney General's Office to communicate with NDCS

August 5, 2014

Page 13

General Counsel on any policy issues affecting the agency and to elevate the discussion to the NDCS Director if it does not appear a proper resolution is likely to occur.

As primary legal counsel for the State of Nebraska and its agencies, the Attorney General's Office is likely in the best position to keep NDCS advised of cases of note affecting agency policy. These cases are less likely to come to the attention of NDCS attorneys in their daily practice. Placing this responsibility with the Attorney General's Office to communicate with NDCS attorneys, and its Director if necessary, would create some certainty as to whose responsibility it is to review and communicate decisions of note.

We appreciate the opportunity to conduct this workplace investigation. We remain available to consult with you about this issue at your request. Please do not hesitate to contact us if we can provide additional information or answer any questions you may have.

Very truly yours,
JACKSON LEWIS P.C.



Chad P. Richter
Sarah J. Millsap

CPR/sjm
Enclosures

cc: Ruth Jones, Director
Department of Personnel



Attorneys at Law

Representing Management Exclusively in Workplace Law and Related Litigation

ALBANY, NY	BRANDTOWN, MD	MORRISTOWN, NJ	RAUICHI-DUNBAR, IL, SC
ALBUQUERQUE, NM	CINCINNATI, OH	NEW ORLEANS, LA	RAPID CITY, SD
ATLANTA, GA	HARTFORD, CT	NEW YORK, NY	RICHMOND, VA
AUSTIN, TX	HOUSTON, TX	NORFOLK, VA	SACRAMENTO, CA
BALTIMORE, MD	INDIANAPOLIS, IN	OMAHA, NE	SAN ANTONIO, TX
BIRMINGHAM, AL	JACKSONVILLE, FL	ORANGE COUNTY, CA	SAN DIEGO, CA
BOSTON, MA	LAS VEGAS, NV	ORLANDO, FL	SAN FRANCISCO, CA
CHICAGO, IL	LONG BEACH, NY	PHILADELPHIA, PA	SAN JUAN, PR
CINCINNATI, OH	LOS ANGELES, CA	PHOENIX, AZ	SEATTLE, WA
CLEVELAND, OH	MEMPHIS, TN	PITTSBURGH, PA	STAMFORD, CT
DALLAS, TX	MIAMI, FL	PORTLAND, OR	TAMPA, FL
DENVER, CO	MILWAUKEE, WI	PORTSMOUTH, NH	WASHINGTON, DC REGION
DETROIT, MI	MINNEAPOLIS, MN	PROVIDENCE, RI	WHITE PLAINS, NY

July 30, 2014

Jeannene Douglass
5511 N.W. Tudor Lane
Lincoln, NE 68521

Re: State of Nebraska Workplace Investigation

Dear Ms. Douglass:

On Friday, July 25, 2014, we spoke by phone. We let you know that Jackson Lewis, P.C. represents the State of Nebraska in conducting a workplace investigation. You initially agreed to meet with us on Tuesday, July 29, 2014, then called back and cancelled our meeting.

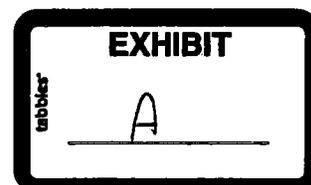
On Monday, July 28, 2014, we spoke again by phone. You stated that you are not willing to meet with us or to participate in our workplace investigation. I asked you a few brief questions and your response was that you do not recall any of the events about which I questioned you. If you have any other information you are willing to offer, please contact me at (402) 391-1991, by Monday, August 4, 2014.

Very truly yours,
JACKSON LEWIS P.C.

Sarah J. Millsap
Chad P. Richter

CPR/sjm

4817-1729-5132, v. 1



The Department of Corrections retained Jackson Lewis to conduct a workplace investigation of errors in inmate sentencing calculations following the February 2013 decision of the Nebraska Supreme Court in State v. Castillas.

This is an investigatory interview, not a disciplinary proceeding of any kind.

The information you share with us may be provided to the Director of the Department of Correctional Services and the Director of the Department of Personnel.

We do not represent you in any way. We represent the State of Nebraska, and in particular, the Department of Correctional Services.

It is our preference that you provide us with a written summary of any information you provide today. If you agree, we will summarize the information you provide in writing, for your signature. You will be able to change any part of our written summary which you believe is incorrect before signing.

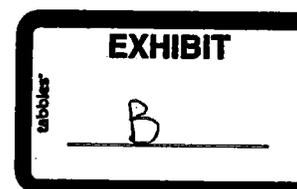
- Your written statement may be used by Director Kenney to determine how to better improve current policy and practice.
 - o Your written statement may also be used in administration of discipline to Corrections employees.

- Are you willing to prepare a written statement?

You are welcome to take a break at any time.

If I ask a question that you do not understand, please ask me to clarify or simplify. Likewise, if it appears to you that I do not understand a particular issue or area with which you work, please let me know immediately.

Due to the sensitivity of this investigation, the affect these issues may have on inmates and the general public and the potential for compromise of our investigation, we ask that you keep your interview and the topics we discuss confidential.



Blum, Kathy

From: Douglass, Jeannene
Sent: Monday, February 11, 2013 10:39 AM
To: Baum, Mickie
Subject: FW: sentence calculation

*Jeannene Douglass
Records Manager II
Central Records Office
Nebraska Department of Corrections
PH: 402-479-5773
E-mail: jeannene.douglass@nebraska.gov*

From: Douglass, Jeannene
Sent: Friday, February 08, 2013 1:41 PM
To: Willard, Linda
Subject: RE: sentence calculation

Wouldn't the right thing to do be to continue the way we have always done it because it, too, was tried and tested. I don't know. it would be a real mess to have to go back in and recalculate everyone who has mandatory minimum sentences. What do you think??

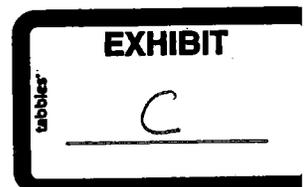
*Jeannene Douglass
Records Manager II
Central Records Office
Nebraska Department of Corrections
PH: 402-479-5773
E-mail: jeannene.douglass@nebraska.gov*

From: Willard, Linda
Sent: Friday, February 08, 2013 1:19 PM
To: Douglass, Jeannene
Subject: RE: sentence calculation

Note that the Supreme Court said the Dist. Court was wrong in how they calculated. If you are doing it differently than what the Supreme Court said is the "correct" way to calculate, do you decide to stay with the "right" way or go with what the Supreme Court said is the correct way?

From: Douglass, Jeannene
Sent: Friday, February 08, 2013 11:48 AM
To: Willard, Linda
Cc: Poppert, Kyle
Subject: RE: sentence calculation

The statements in this regarding the calculation of parole eligibility are correct. The manner presented regarding the discharge date calculation is not correct.



Parole eligibility has always been calculated by adding the mandatory minimum required by law to the date the sentence begins. IF the minimum sentence is greater than the mandatory minimum term, one-half of the remainder is added to the mandatory minimum term to provide the total minimum sentence to be served. Any jail credit is credited to the minimum term.

However, Mr. Castillas will not serve 52 ½ years for discharge; the inmate must serve either one-half of the maximum term less jail credit OR the Mandatory Minimum term, whichever is longer, before being discharged from the sentence. The discharge date is not calculated in the same manner as the parole eligibility date.

In Mr. Castillas' case, he is serving a 30-year minimum sentence, 25 years of which are mandatory and not eligible for good time application. He will become eligible in 27 ½ years (25 years plus ½ of the remaining 5 years) less 379 days jail credit.

Mr. Castillas will discharge, at the very earliest, after serving one-half of the maximum 80-year sentence (40 years less 379 days jail credit). The 25-year mandatory minimum is less than the 40 years he will serve to be discharged.

Jeannene Douglass
Records Manager II
Central Records Office
Nebraska Department of Corrections
PH: 402-479-5773
E-mail: jeannene.douglass@nebraska.gov

From: Willard, Linda
Sent: Friday, February 08, 2013 9:41 AM
To: Poppert, Kyle; Douglass, Jeannene
Subject: sentence calculation

The attached case came down from the Nebr. Supreme Court today. Starting at the bottom of p. 188 they discuss sentence calculation. It is my understanding that this is how you currently do the calculation. Others in the office thought you might be doing it differently. So I am sending this to you so you can make sure you are doing the calculation in accordance with the Supreme Court's direction.

Poppert, Kyle

From: Douglass, Jeannene
Sent: Friday, February 08, 2013 2:09 PM
To: Green, George
Cc: Willard, Linda; Poppert, Kyle
Subject: David G. Castillas 74035



David Castillas,
74035.pdf

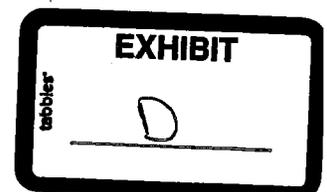
I have been in conversation with Linda Willard regarding the attached Supreme Court decision regarding the calculations of mandatory minimum sentences. While I agree with, and we are currently calculating the mandatory minimum terms in the manner expressed in this decision, we do not calculate the discharge date in the manner described in this decision.

Linda asked me if we would continue to calculate the sentence in the right way or go with what the Supreme Court says. I said, and she supported me, that we would do what is in the inmate's best interest, that being, continue calculating the sentences the way we have always done it. He will serve one-half of the maximum sentence for discharge, as long as the mandatory minimum term required by law is served. If we would calculate this sentence in the manner according to the Supreme Court's decision, Mr. Castillas would serve an additional 12 ½ years (40 years for discharge the way we calculate the sentence; 52 ½ years following the Supreme Court's model). She agreed with me, and suggested that I share this with you, Mr. Green, for your input and expertise in this matter. She also said the inmate, obviously, would not complain since he will serve less time by our calculations. (It would also serve the Director's desires, as well, to not increase our population any more than we must.)

I am available if you have any questions concerning this issue.

Thank you.

Jeannene Douglass
Records Manager II
Central Records Office
Nebraska Department of Corrections
PH: 402-479-5773
E-mail: jeannene.douglass@nebraska.gov



From: Douglass, Jeannene
Sent: Tuesday, February 19, 2013 8:39 AM
To: Baum, Mickie
Subject: FW: Castillas #74035

Thought you might get a kick out of this e-mail from KP. Specially the last sentence~!!!

*Jeannene Douglass
Records Manager II
Central Records Office
Nebraska Department of Corrections
PH: 402-479-5773
E-mail: jeannene.douglass@nebraska.gov*

From: Poppert, Kyle
Sent: Sunday, February 17, 2013 11:24 AM
To: Douglass, Jeannene; Shurter, Ginger
Subject: Castillas #74035

Jeannene, Ginger
Regarding the Castillas #74035 case you have been in discussion with Linda Willard.

I need you to work with Ginger and draft a response to George Green for my review on Friday.

I would like you to explain our current practice, the expected practice under the ruling of the Supreme Court and why you believe our current practice is the proper course.

NDCS and the court are relying on the same case history to arrive at our decisions. I think the court is misinterpreting the previous cases. Anyway we need to be able to explain this to George.

I do want to caution folks, our current efforts to reduce our inmate population has nothing to do with how we apply good time laws. The law is the law and we will act accordingly.
Thanks,

Kyle

Kyle J. Poppert
Classification and Inmate Records Administrator
Nebraska Department of Correctional Services
Programs & Community Services Division
Phone: (402) 479-5750
Cellular (402) 326-2423
Fax: (402) 742-2349
Kyle.Poppert@nebraska.gov

Change is inevitable, growth is optional.



From: Douglass, Jeannene
Sent: Monday, March 11, 2013 2:28 PM
To: Poppert, Kyle
Cc: Green, George
Subject: Mandatory Minimum sentence calculation procedure

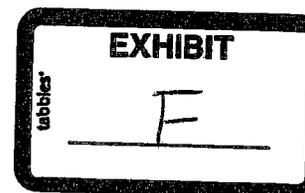


mandatory
minimum mem...

You had asked me for something in writing explaining how we calculate mandatory minimum sentences. I am attaching a memorandum dated 9-18-1996 from Ron Riethmuller, then Records Administrator, regarding our procedures in calculating mandatory minimum sentences. This is the procedure we have been using and has been supported by the Attorney General's Office as well as court opinions.

I hope this information is useful to you in your quest.

Jeannene Douglass
Records Manager II
Central Records Office
Nebraska Department of Corrections
PH: 402-479-5773
E-mail: jeannene.douglass@nebraska.gov



Gal

STATE OF NEBRASKA

DEPARTMENT OF CORRECTIONAL SERVICES

Harold W. Clarke
Director



E. Benjamin Nelson
Governor

MEMORANDUM

DATE: September 18, 1996

TO: Records Staff

FROM: Ron Riethmuller, Records Administrator *RR*

RE: Computing Parole Eligibility and Discharge Dates on Inmates Serving Mandatory Minimums

To comply with the recent Attorney General's Opinion concerning mandatory minimum sentences, the following procedures shall be used to insure that mandatory minimum terms are served.

We will proceed with the procedure as was discussed at the July 12, 1996 records meeting regarding parole eligibility computation. The parole eligibility date is computed based on the inmate serving the entire mandatory minimum term provided by statute plus one-half (1/2) of the balance of any court imposed minimum term beyond the mandatory minimum. For example, a total sentence of 8 to 14 years for a 1DF (mandatory minimum of 3 years) is computed as follows:

Parole Eligibility: Inmate must serve the entire three (3) years PLUS one-half (1/2) of the remaining five (5) years, a total of 5 1/2 years for parole eligibility. This procedure, which complies with the language in LB 371, prohibits awarding of good time on mandatory minimums.

The following procedure will insure that no inmate is discharged prior to serving the mandatory minimum.

1. The discharge date on the maximum term will be compared with the mandatory minimum provided by statute.
2. If the discharge date is prior to the inmate serving the entire statutory mandatory minimum, the discharge date shall be changed to reflect the later date.

Example: If an inmate is sentenced to a term of 3 to 5 years for a 1DF under LB 816, both the parole eligibility and discharge dates would be 3 years.

3. If the discharge date on the maximum term is longer than the mandatory minimum, no changes will be made on the discharge date.

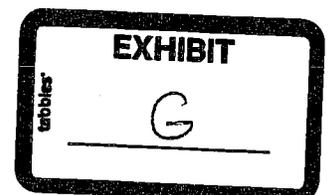
I have reviewed the mandatory minimums on all active inmates; this procedure will extend the discharge dates of nine inmates. A list of the affected inmates is attached.

xc: Harold W. Clarke
Larry A. Tewes
George D. Green
Laurie Smith Camp
Manuel S. Gallardo

From: Freudenberg, John
Sent: Tuesday, February 19, 2013 2:09 PM
To: Blum, Kathy
Subject: Case citation

The case citation to which I was referring to earlier is *State v. Castillas*, 285 Neb. 174 (2013).

John R. Freudenberg
Criminal Bureau Chief
Nebraska Attorney General's Office
Lincoln, NE 68508
(402) 471-3833



From: Thompson, George A. (DC Atty Criminal) <George.Thompson@douglascounty-ne.gov>
Sent: Tuesday, August 06, 2013 1:59 PM
To: Poppert, Kyle
Subject: RE: Sebesta #77046

Kyle,

Sorry for getting back to you so late. I was inquiring into the sentence based on *State v. Castillas*. As you know, the third count (possession of a deadly weapon by a prohibited party) is a ID Felony requiring a mandatory minimum. The Court in *Castillas* held that mandatory minimum sentences cannot concurrently.

In addition, I was looking at the mandatory discharge date. Per *Castillas* one computes the same by subtracting the mandatory minimum sentence from the maximum sentence, halving the difference, and adding that difference to the mandatory minimum. Assume that count three does not run consecutive to the others two – I put the mandatory release date at 12 ½ years. That would be even greater if count three runs consecutive.

With all that said, I was also told there would be no math in this job so I could be way off. The reason for my inquiry was that I had appealed the sentence on the basis of leniency. *Castillas* was entered after I had submitted my brief. Can you let me know if I am out of bounds on my calculations or interpretation of *Castillas*?

Thanks,

George

From: Poppert, Kyle [mailto:Kyle.Poppert@nebraska.gov]
Sent: Wednesday, July 10, 2013 4:32 PM
To: Thompson, George A. (DC Atty Criminal)
Subject: Sebesta #77046

Thank you for your call regarding Mr. Sebesta #77046.

My records indicate he was sentenced to a term of:

6 to 10 years for manslaughter

A consecutive sentence of 6 to 10 years for use of a deadly weapon to commit a felony

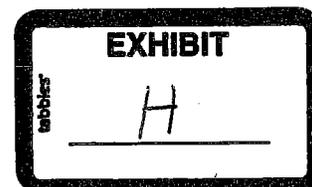
And a concurrent term of 3 to 10 years for possession of a deadly weapon by a prohibited person.

The last two sentences have a combined mandatory minimum of 8 years.

I show his parole eligibility date of 8-10-2020 and a tentative release date of 2-10-2022.

If I can clarify any of this, or if you have additional questions, please don't hesitate to contact me.
Kyle

Kyle J. Poppert, Administrator
Nebraska Department of Correctional Services
Classification, Inmate Records, Warrants & Extraditions
Phone: (402) 479-5750
Cell: (402) 326-2423
Fax: (402) 742-2349
Kyle.Poppert@nebraska.gov



From: Wayne, Larry
Sent: Wednesday, October 16, 2013 9:45 PM
To: Poppert, Kyle
Subject: Re: Sentence Review Committee

well done Kyle thank you

Sent from my Verizon Wireless 4G LTE DROID

"Poppert, Kyle" <Kyle.Poppert@nebraska.gov> wrote:

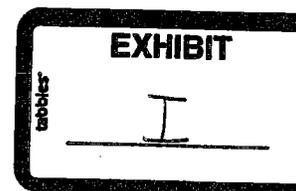
The Central Records Office Managers and Administrator will act as a sentencing committee to review any sentencing orders that may need clarification due to policy, Attorney General opinions, changes in State Statutes, or court rulings. We will be inviting a member of team legal to sit in as well. If you have any concerns, please share them with Nikki Peterson as she will be coordinating the activities of the committee. She will produce meeting minutes and distribute them to the facility records managers.

Our first meeting will be Monday October 28, 2013. An agenda will be forthcoming. Topics will include a recent Supreme Court ruling on sentence calculations regarding mandatory minimums, the statutory language of "at least" being treated as a mandatory minimum, pulling cases from Lexis Nexis and any other issues that may come up before the meeting.

Kyle

Kyle J. Poppert, Administrator
Nebraska Department of Correctional Services
Classification, Inmate Records, Warrants & Extraditions
Phone: (402) 479-5750
Cell: (402) 326-2423
Fax: (402) 742-2349
Kyle.Poppert@nebraska.gov

Change is inevitable, growth is optional.





Date: October 31st, 2013
Time: 9am
Subject: Sentence Review Committee Meeting Minutes
Present: Kyle Poppert, Kathy Blum, Jeff Beatty, Mickie Baum, George Green, Sharon Lindgren, Ginger Shurter, Nikki Peterson,
Absent: NONE
Agenda:
Current Business:

State v. Banes- Sentences: When concurrent sentences are imposed the jail time credit is applied against EACH concurrent sentence, because the longest sentence determines the offender's actual length of time in prison.

Issue: Current calculations provide the JTC only applied to the initial sentence.

Status: Mickie is currently auditing sentences to catch all changes. This list of changes is very long; currently Mickie is the only staff working on this list. As facilities records staff are able, the list will be broken down by facility.

Conclusion: We audit these sentences to our best abilities. If a judicial issue arises as a result we will handle it then.

DUI- Mandatory Minimum: State Statue language interpretation of "at least" meaning a Mandatory minimum sentence.

Status: Mickie is currently still working on NSP and OCC, all other facilities are complete.

Mickie: George Shepard District Court Decision- Sex offender needs to supply his DNA. We cannot take away his good time. Needs to register in the state of Nebraska before he can transfer. Sharon will follow up. Issue: Will AG appeal.

Mickie: Hatten 78546: Wrote a IIR to the Records Administrator is have his sentenced reviewed for Jail time Credit. The sentence was entered into CTS incorrectly. Mickie has recalculated the sentence. George: The sentence should be calculated correctly, then notify the inmate. Currently housed at the WEC, based off new calculations he is no longer qualified for WEC. And will soon be transferred to the NSP.

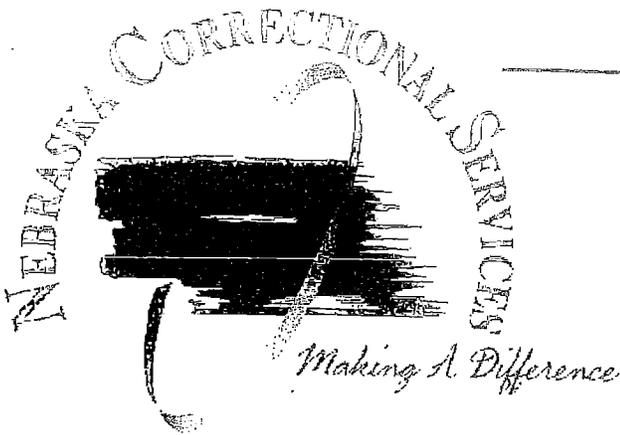


Mickie: Supreme Court On MIM Calculations- State V Castille: how to apply MIM when calculating PED and TRD with good time applied. The court has made an assumption of how we are calculating sentences especially the MIM. But we are doing it a different way. George: We need to clarify exactly what the SC intention is on this, before we as a department act. Sharon: We have been performing calculations our current way for years. We are now aware of this situation, we will act when we are specifically told our current way is wrong and it needs to be changed.

New business:

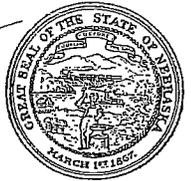
Revised State Statue 83-187- The Dept. currently complies with sections (1) and (2) but not in compliance with sec. (3) the dept. shall provide a copy of discharge to the court, county sheriff, and local police department if applicable. Problem: there is no consistency with contact persons to send emails. George: Possible solution: Develop a template of "Inmate Release or Discharge" to include his release date, to send to the county courts and sheriffs. Includes Parolees and Discharges, Not to include the death of an inmate or RFP. Possibly send out weekly notifications AFTER the inmate has ACTUALLY been released from a facility. Aim to implement by December 1st, 2013. Have Legal proof template before it is sent out.

AG opinion- Ombudsman reviewing of inmate file. Copies made from inmates filed should not be shared and strictly used by the ombudsman. George: If the ombudsman office needs a copy of any paper work, ask them to send us an email requesting specific documents. This is to provide proof of what was given, copied, sent and when it was done. (Notify Director Kenney prior to making this change.)



STATE OF NEBRASKA

Department of Correctional Services
Dave Heineman, Governor
Michael Kenney, Director



Date: October 31st, 2013

Time: 9am

Subject: Sentence Review Committee Meeting Minutes

Present: Kyle Poppert, Kathy Blum, Jeff Beatty, Mickie Baum, George Green, Sharon Lindgren, Ginger Shurter, Nikki Peterson,

Absent: NONE

Agenda:

Current Business:

State v. Banes- Sentences: When concurrent sentences are imposed the jail time credit (JTC) is applied against EACH concurrent sentence, because the longest sentence determines the offender's actual length of time in prison.

Issue: Current calculations provide the JTC only applied to the initial sentence.

Status: Mickie Baum is currently auditing sentences to catch all changes. This list of changes is very long; currently Mickie is the only staff working on this list. As facilities records staff are able, the list will be broken down by facility.

Conclusion: We audit these sentences to our best abilities. If a judicial issue arises as a result we will handle it then.

DUI- Mandatory Minimum: State Statue language interpretation of "at least" meaning a mandatory minimum sentence.

Status: Mickie Baum is currently working recalculating sentences for NSP and OCC, all other facilities are complete.

Conclusion: Again, audit to the best of our abilities. Notify the inmates of the changes. And provide them with a consistent response when questions arise.

George Shepard v. Houston- District Court Decision- Shepard a sex offender who will be required to serve his full term for failing to provide his DNA as outlined in the DNA Identification Act effective July 15, 2010. District Court ruled unconstitutional for the DCS to withhold any good time.

Issue: There are 28 other inmates who fall under this criteria.

Conclusion: Will the Attorney General appeal the decision. Future issues could arise from this case.

EXHIBIT

tabbiter

K

Hatten 78546: Wrote an Inmate interview request to the Records Administrator to have his sentenced reviewed for a Jail time Credit with the intention he deserved a lesser sentence. Mickie Baum reviewed his sentence and noticed the sentence was indeed entered into CTS incorrectly.

Status: Mickie has recalculated the sentence. She discovered the new calculation actually increased Hatten's #78546 length of stay.

Conclusion: The sentence should be calculated correctly, then give notification to the inmate and appropriate staff at WEC. Hatten #78546 is currently housed at the WEC, based off new calculations he is no longer qualified for the program. And will soon be transferred to the NSP.

State v. Castillas: The Nebraska Supreme Court affirmed the district court's decision; however the Supreme Court has made an assumption of how the DCS is calculating sentences on the maximum term when there is a mandatory minimum.

Issue: Our current practice is different than that of the court's assumption.

Status: We need to clarify exactly what the Supreme Court's intention is on this, before we as a department act.

Conclusion: We have been performing calculations our current way for years. We are now aware of this situation, we will act when we are specifically told our current way is wrong and it needs to be changed.

New business:

Revised State Statute 83-187- The DCS currently complies with sections (1) and (2) but not in compliance with section (3) the DCS shall provide a copy of the discharge to the court, county sheriff, and local police department if applicable.

Issue: There is no consistency with contact persons to be able to provide these copies.

Possible solution: Develop a template of "Inmate Release or Discharge" to include his release date, that will notify county courts and sheriffs. This notification includes Parolees and Discharges, will not to include the death of an inmate or RFP. Possibly develop an automated system that would send out weekly notifications AFTER the inmate has ACTUALLY been released from a facility. Aim to implement by December 1st, 2013. Have Legal proof the template before its implemented.

Attorney General opinion regarding State Ombudsman reviewing of inmate files. Per state statute the Ombudsman office is allowed access to inmate files. Due to confidentiality purposes copies made from inmates file should not be shared and solely used by the ombudsman.

Solution: If the ombudsman office needs a copy of any documents from an inmate's file, require them to send us an email requesting specific documents and we shall provide them. This is to protect records staff by showing a date and time the request was received and what exact documents were provided. (Notify Director Kenney prior to making this change.)

Next Meeting: TBA

	ADMINISTRATIVE REGULATION Department of Correctional Services State of Nebraska	NUMBER 104.01	Page 1 of 14
		INMATE RECORDS MANAGEMENT	

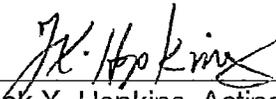
NOT TO BE DISSEMINATED TO INMATES

EFFECTIVE: March 1, 1980
 REVIEWED: July 30, 2004
 REVISED: September 29, 2006
 REVISED: March 15, 2006
 REVISED: November 8, 2007
 REVISED: September 26, 2008
 REVISED: September 24, 2009
 REVISED: September 30, 2010
 REVISED: September 27, 2011
 REVISED: September 21, 2012
 REVISED: October 25, 2013

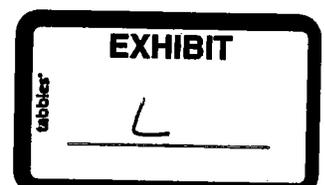
SUMMARY of REVISION/REVIEW

Minor revisions include: in Procedure II changing NiCAMS to 'Department's Case Management Database'; the correction of an AR title in Procedure II.C.; the addition of N before DCS where applicable throughout; reformatting where required; and, minor changes in the Reference Section.
--

APPROVED:



 Frank X. Hopkins, Acting Director
 Nebraska Department of Correctional Services



	ADMINISTRATIVE REGULATION Department of Correctional Services State of Nebraska	NUMBER 104.01	Page 2 of 14
		INMATE RECORDS MANAGEMENT	

PURPOSE

This Administrative Regulation provides a policy statement outlining guidelines for managing inmate records. This includes all manual and computerized systems.

GENERAL

This administrative regulation shall apply to all facilities within the jurisdiction of the Nebraska Department of Correctional Services (NDCS). Each facility shall have an inmate records office appropriately staffed. Each records office shall adopt procedures consistent with this regulation. In addition, this regulation shall also apply to the Central Records Office. The Institutional "File" shall mean all NDCS records in any form including written records and information stored in electronic form.

PROCEDURE

I. WRITTEN RECORDS

A. Facility File

1. File Establishment

A record of each offender committed to the custody of NDCS shall be established upon receipt of the inmate and shall be maintained throughout the inmate's incarceration.

2. Privacy

Institutional/program policy and procedure shall designate appropriate employees or classes of employees who shall be permitted routine access to inmate records. Facility/Program administrators or their designee must give authorization to access files to other employees of the NDCS who are not normally authorized to do so.

3. Content and Format

An inmate's individual file as described in §83-178 of the Nebraska Statutes shall contain the admission summary, pre-sentence report (if available), the classification report, official records of conviction and commitment, disciplinary reports, and accurate computation and recording of good time, updated tentative release date, parole plans and records including contact notes, mental health records, treatment files, medical records, and other pertinent data. With the exception of the mental health records noted below, the data described above need not be contained in the inmate's individual file in order to be considered an integral part of the institutional file as defined in §83-178.

Mental health records, specifically the inmate's initial psychological evaluation/assessment (which is already included in the classification report) and all subsequent updates of that initial material shall be contained in the inmate's institutional file.

	ADMINISTRATIVE REGULATION Department of Correctional Services State of Nebraska	NUMBER 104.01	Page 3 of 14
		INMATE RECORDS MANAGEMENT	

A standardized format for all inmate files has been developed. The format will be followed by all records offices. The attached order of filing sheet will be utilized at all NDCS institutional records offices. The order of filing will be reviewed annually with this AR. Employees authorized to have access to inmate files should be familiar with format and follow it accordingly.

In addition, files maintained by community corrections facilities will also contain the following information:

- initial intake information
- case information from referral source, if available
- case history/social history
- medical record, when available
- individual plan or program
- signed release of information forms
- evaluation and progress reports
- current employment data
- program rules and disciplinary policy, signed by offender
- documented legal authority to accept offender
- grievance and disciplinary record
- referrals to other agencies
- final discharge report

4. Review

Inmate records are reviewed at a minimum annually during the inmate's classification/personalized plan review. When files are reviewed, a notation will be made of the file front at least annually. The Inmate Management File Audit Form will be used to document custody reviews, personalized plan reviews and contact notes are up to date and initiates the purging of documents in the miscellaneous section. Documents in the miscellaneous section of the Inmate Management File will be purged and destroyed 5 years after the document's creation. In addition, files are also reviewed whenever the file is accessed by authorized staff. These reviews insure information contained in the file is current and accurate. Any discrepancies should be brought to the attention of the Facility Records Manager for appropriate action. The Records Administrator will assign a CRO records manager to each records center to act as a liaison and resource between the CRO and the records center. The CRO records manager will be responsible for conducting an audit of the records office during the institution's internal ACA audit. The audit will review performance measures including accuracy of time calculations, commitment orders, victim witness notifications, sex offender registrations and office procedures. On the first working day of July, each facility records office will verify the files in its custody and report any discrepancies to the Records Administrator.

5. Security

Inmate records will be marked "confidential" and kept in a secure area. The institution/program head will institute procedures to protect the records from unauthorized access, theft, loss or destruction.

	ADMINISTRATIVE REGULATION Department of Correctional Services State of Nebraska	NUMBER 104.01	Page 4 of 14
		INMATE RECORDS MANAGEMENT	

6. Utilization

Information contained in inmate records and/or information from automated records systems shall be the basis of the various decision-making activities regarding the inmates.

7. Release of Information

a. Confidential information: Contents of inmate files are confidential per Neb. Rev. Stat. §83-178. This statute prohibits inmate access to these records and does not allow public inspection except by court order for good cause. However, information in an inmate's file which is available to the inmate from other sources (such as records of disciplinary actions) may be released after authorization by the inmate (including parolees and discharged inmates) through the signing of a Release of Information consent form that details:

- 1) The nature of the information released;
- 2) The requesting party;
- 3) The releasing party; and
- 4) The reason the information is needed.

b. Public Information: There is some information contained in inmate files that is considered public information. Matters of public record may be released to the public upon request. Matters of public record include the following:

- 1) Inmate's name and institutional number;
- 2) Inmate's age and date of birth;
- 3) Facility location;
- 4) Committing offense(s);
- 5) Length of sentence;
- 6) County of commitment;
- 7) Parole eligibility and discharge dates;
- 8) Parole hearing date.
- 9) Mug/Dress Out photographs.

c. Independent Researchers: Researchers retained on a contractual basis with the NDCS may have access to inmate files. These researchers shall be familiar with all institution/program procedures concerning the confidentiality of information and shall abide by them.

	ADMINISTRATIVE REGULATION Department of Correctional Services State of Nebraska	NUMBER 104.01	Page 5 of 14
		INMATE RECORDS MANAGEMENT	

Consult Administrative Regulation 103.01, *Research* for further information. The Records Administrator will be notified prior to the start of any research project.

- d. Sharing Information: NDCS may share records from inmate files with the Attorney General's office, the Governor's office, other correctional facilities, probation departments and other governmental entities having a legitimate interest in an inmate's files.

8. **Records Retention**

Inmate files shall be maintained by the appropriate records center from the date of admission through the date discharged from the NDCS. Files of discharged inmates are sent to the Central Records Office for storage. Files of paroled female inmates are to be transferred to the Nebraska Correctional Center for Women (NCCW) records office within 30 days of the status change. Files of paroled male inmates will be transferred to the Central Records Office within 30 days of the status change. Files retained in the Central Records Office are retained or destroyed per the NDCS records retention policy.

9. **Transfer of Records**

When an inmate is transferred from one institution to another within the NDCS, his/her updated institutional file shall be simultaneously transferred, or if the records are not immediately available, within 72 hours. The file will be current, including the completion all matters such as notifications. DNA testing and/or additional sentences will be processed. The file front will accurately reflect an inmate's status and will be completed prior to his or her transfer. The file will be audited and discrepancies corrected before an inmate is transferred. This policy applies to the transfer of medical records, unit file and appropriate updates to any automated system. Mental Health records, with current progress report or treatment status shall be simultaneously transferred when mental health programming is available at the receiving institution.

B. **Central Office File**

Nebraska Revised Statute 83-1,100 requires the NDCS to maintain all records and files associated with the Board of Parole. To comply with this requirement, the Central Records personnel shall also establish a file on each committed inmate. This file will be used by the Board of Parole and their staff to assist them in carrying out their duties. In addition, the file will be shared with NDCS staff at Central Office to assist in routine decision-making activities. This file contains much of the same information as described in Procedure I.A.3. In addition, this file also contains information generated by the Board of Parole and their staff that is normally not contained in the institution file. The applicable paragraphs under Procedure I.A. shall also apply to these files. The files are reviewed by Parole Board staff at the inmate reviews and hearings. In addition, files are also reviewed whenever the file is accessed by authorized staff. These reviews insure information contained in the file is current and accurate. Any discrepancies should be brought to the attention of the Central Records Office Manager for appropriate action.

	ADMINISTRATIVE REGULATION Department of Correctional Services State of Nebraska	NUMBER 104.01	Page 6 of 14
		INMATE RECORDS MANAGEMENT	

C. Inmate Management File

The institutional treatment file will be renamed the Inmate Management File which is more in keeping with its function. New six section file folders will be ordered as needed. Until then dividers can be used to separate the new sections. Contact notes should be entered into the existing Department Case Management Database application. The sections of the Inmate Management File are as follows:

Section 1. Classification Study, Initial Classification forms, Reclassification Forms and Classification Appeals.

Section 2. Inmate Management File Audit Form.

Section 3. Personalized Plans and programming information.

Section 4. Parole Board information and letters.

Section 5. Miscellaneous (interview requests, correspondence and other forms generated by the institution or the inmate).

Section 6. Working documents (cell assignment sheets, rules and regulation agreements, work reports).

D. Central Records Administration

The Records Administrator will share supervision of institutional records managers with facility staff. Leave will continue to be approved by the supervisor at the institution. The institutional supervisor will coordinate and complete annual evaluations collaboratively with the Records Administrator. The Records Administrator will be promptly informed of records office related situations, including errors in time calculations and employee discipline, as the need arises.

II. CORRECTIONAL TRACKING SYSTEM, DEPARTMENT, & OTHER AUTOMATED RECORDS

A. Data Entry Functions

Whenever possible, data entered in the system shall be the responsibility of the person or program originating the information. The entries shall be entered in accordance with the Corrections Tracking System (CTS) help screens. CTS will accurately reflect an inmate's movement such as overnight hospital stays and placement on or removal from segregated confinement.

B. Output Records

All routine requests for CTS-Siebel generated reports shall be coordinated through the NDCS systems analyst located at Central Office. Requests for functions and changes to data entry systems and electronic records must be submitted for review to the records administrator at the same time the request is submitted to the NDCS systems analyst.

	ADMINISTRATIVE REGULATION Department of Correctional Services State of Nebraska	NUMBER 104.01	Page 7 of 14
		INMATE RECORDS MANAGEMENT	

C. Security and Verification of Data

Specific procedures shall be established to provide for security of the CTS, which will include provisions for both terminal and password security. Additional information regarding these procedures may be obtained from A. R. 104.06, *Computer Equipment and Telephone Usage*. Accessibility to the system should be limited to ensure the protection of the privacy of inmates and staff. In order to assure that complete, accurate and necessary information is contained within the system; procedures shall be established to provide for verification of data both prior to and after inclusion within the system. Procedures should include the following safeguards.

1. Criminal history record information is stored by the computer in such a manner that it cannot be modified, destroyed, accessed, changed, purged or overlaid in any fashion by non-NDCS terminals;
2. Programs are used that will prohibit inquiry, records updates or destruction of records from any other terminal other than NDCS terminals;
3. Destruction of records is limited to designated terminals under the direct control of the NDCS;
4. Operational programs are used to detect and store, for the output of designated NDCS employees, all unauthorized attempts to penetrate any information system, program or file; and
5. Security programs are known only to NDCS employees responsible for criminal history record information control or individuals and agencies pursuant to a specific contract with the NDCS.

III. INMATE TIME COMPUTATIONS

Copies of all commitment orders will be forwarded electronically to the Central Records Office (CRO) the same day they are received. They can be faxed to (402) 742-2349 or scanned and emailed to DCS.CentralRecords@Nebraska.gov. Sentence calculations at the institutional level will be completed by a records manager or records officer and reviewed by the CRO records manager assigned to that facility. CTS 120 and 122 reports will be signed and dated by the originating records manager or officer. The CRO records manager will sign and date the CRO copy of the 120 and 122 reports upon review.

There are seven separate active Nebraska laws as explained below governing the release of every inmate committed to the Department. These statutes, along with the opinions of Nebraska courts and the state Attorney General's office, form the basis of all time calculations. After an inmate is admitted to an institution, the inmate will receive written notice of his/her parole eligibility date and mandatory discharge date (tentative release date). When these dates are changed for any reason, the inmate will be given written notice of the new mandatory discharge date and/or parole eligibility date. Computations of good time will be consistent in all the NDCS' institutions. Records Office personnel in the appropriate institution will answer an inmate's questions regarding the computation of his/her sentence. Specific questions on proper application of the various laws and opinions should be referred to the NDCS' Records Administrator for clarification.

A. 2011 Law (Commonly known as LB 191 - Effective March 16, 2011)

	ADMINISTRATIVE REGULATION Department of Correctional Services State of Nebraska	NUMBER 104.01	Page 8 of 14
		INMATE RECORDS MANAGEMENT	

This law is composed of two types of releases and two types of good time.

1. Discretionary parole by the Board of Parole - Eligibility is based on serving one-half of the minimum term (statutory or court-imposed minimum, whichever is longer). **EXCEPT**, no reduction of sentence shall be applied to any sentence imposing a **MANDATORY minimum term**.
2. Mandatory Discharge - Discharge is based on the block crediting of six month's good time for each year of the maximum term, and pro rata thereof for any part which is less than a year. This good time plus any jail time is deducted from the maximum term of imprisonment to establish the mandatory discharge date.
3. The Department shall reduce the term of a committed offender by three days on the first day of each month following a twelve-month period of incarceration within the Department during which the offender has not been found guilty of a Class I or Class II offense or more than three Class III offenses under the Department's disciplinary code. Reductions earned under this subdivision shall not be subject to forfeit or withholding by the department.
4. Good time reductions granted may be forfeited, withheld and restored by the Warden/Program Administrator with approval of the Director after the inmate has been consulted regarding charges of misconduct

B. 1998 Law (Commonly known as LB 364 - Effective July 1, 1998)

This law is composed of two types of releases and one type of good time.

1. Discretionary parole by the Board of Parole - Eligibility is based on serving one-half of the minimum term (statutory or court-imposed minimum, whichever is longer). **EXCEPT**, no reduction of sentence shall be applied to any sentence imposing a **MANDATORY minimum term**.
2. Mandatory Discharge - Discharge is based on the block crediting of six month's good time for each year of the maximum term, and pro rata thereof for any part which is less than a year. This good time plus any jail time is deducted from the maximum term of imprisonment to establish the mandatory discharge date.
3. Good time reductions granted above may be forfeited, withheld and restored by the Warden/Program Administrator with approval of the Director after the inmate has been consulted regarding charges of misconduct.

C. 1996 Law (Commonly known as LB 371 - Effective July 1, 1996)

This law is composed to two types of releases and two types of good time.

1. Discretionary parole by the Board of Parole - Eligibility is based on serving one-half of the minimum term, **EXCEPT** no reduction of sentence shall be applied to any sentence imposing a **MANDATORY minimum term**.
2. Mandatory discharge - Discharge is based on serving the maximum term minus credit for good time.

	ADMINISTRATIVE REGULATION Department of Correctional Services State of Nebraska	NUMBER 104.01	Page 9 of 14
		INMATE RECORDS MANAGEMENT	

There are two types of good time. Upon admission to the Department, three month's good time (commonly referred to as "statutory good time") is deducted from the maximum term. An additional three month's good time (commonly referred to as "positive time") will be deducted from the maximum term as well. The Nebraska Court of Appeals ruled in Worley v. Houston that all good time, including positive time must be granted at the beginning of the sentence. The total of these two good times, plus any jail time credit, is deducted from the maximum term of imprisonment to establish the mandatory discharge date.

3. Good time reductions granted above may be forfeited, withheld and restored by the WARDEN/PROGRAM ADMINISTRATOR with approval of the Director after the inmate has been consulted regarding charges of misconduct.

D. 1992 Law (Commonly known as LB 816 - Effective July 15, 1992)

This law is composed of two types of releases and one type of good time.

1. Discretionary parole by the Board of Parole in which eligibility is determined by deducting the good time (six months per year) from the minimum sentence (statutory or court-imposed minimum, whichever is longer).
2. Mandatory discharge by the institution with block crediting of six months good time for each year of term, and pro rata thereof for any part which is less than a year. This good time plus any jail time is deducted from the maximum term of imprisonment to establish the mandatory discharge date.
3. Such reductions of the above term may be forfeited, withheld and restored by the Warden/Program Administrator with approval of the Director after the inmate has been consulted regarding charges of misconduct.

E. 1975 Law (Commonly known as LB 567 - Effective August 24, 1975)

This law is composed of two types of releases and two types of good time (good behavior and meritorious).

1. Discretionary parole by the Board of Parole in which eligibility is determined by deducting one type of good time (good behavior) from the minimum sentence (statutory or court-imposed minimum, whichever is longer).
2. Mandatory discharge by the institution with block credits of
 - a. Good behavior good time at the rate of two months for the first year, two months for the second year, three months for the third year and four months for each succeeding year of the term and pro rata for any part thereof which is less than a year.
 - b. Meritorious good time of two months for each year of the sentence. Both types of creditable good time plus jail time, if any, deducted from the full time establishes the mandatory discharge date.

	ADMINISTRATIVE REGULATION Department of Correctional Services State of Nebraska	NUMBER 104.01	Page 10 of 14
		INMATE RECORDS MANAGEMENT	

3. Such reductions of the above terms may be forfeited, withheld and restored by the Warden/Program Administrator with the approval of the Director after the inmate has been consulted regarding the charges of misconduct.

F. Pre-1975 Law (Commonly known as LB 1307 - Effective August 25, 1969; as amended by LB 1499, effective July 6, 1972)

This amended law prescribes a total parole release mechanism. Such mechanism consists of discretionary and mandatory releases; however, the mandatory release component is administratively subdivided as conditional and mandatory releases due to the phraseology of the law. Each type of release shall be credited with two types of good time (good behavior and meritorious) as described below.

1. Every inmate who is confined in the institution shall be entitled to the reduction for good behavior good time from the sentence as follows: Two months on the first year, two months on the second year, three months on the third year and four months for each succeeding year of the term and pro rata for any part thereof which is less than a year. This reduction of time was applied to the sentence at the time of commitment to NDCS.
2. Additionally, every committed inmate shall be entitled to earn meritorious good time at a rate of five days for each month of confinement which is applied as a further reduction of the sentence at the time of the initial work or school assignment within the institution. However, the time that an inmate becomes unassigned from the institution assignment for other than administrative purposes shall not be creditable as time earned.
3. The total of the above reductions, plus jail time, shall be deducted:
 - a. From an inmate's minimum term, to determine the date of eligibility for release on discretionary parole;
 - b. From an inmate's maximum term to determine the date when the release on parole becomes conditional; the release shall become mandatory if all credited/earned good time is lost through misconduct while confined. However, the inmate must be mandatorily released no later than three months prior to the full term.
4. A parole violator may have three types of releases:
 - a. Another discretionary parole by the Board of Parole;
 - b. Mandatory parole (described in Procedure III.E.3. above);
 - c. Discharge at the expiration of the inmate's maximum prison term.
5. The forfeiture and withholding of the above reductions shall be made as follows:
 - a. Any part or all credited good behavior good time;
 - b. Any part or all meritorious good time earned to the date of the commission of the infraction.

	ADMINISTRATIVE REGULATION Department of Correctional Services State of Nebraska	NUMBER 104.01	Page 11 of 14
		INMATE RECORDS MANAGEMENT	

6. Both the good behavior and meritorious good times may be restored, for continuous good conduct thereafter, as may be deemed appropriate by the Warden/Program Administrator.

G. Pre-1969 Law (Effective prior to August 25, 1969)

This law is composed of two types of releases: (1) discretionary parole by the Board of Parole; (2) mandatory discharge by the Board of Parole and Parole Administration with credit of two types of good time commonly referred to as "statutory" (good behavior) good time and "extra earned" meritorious) good time and "blood" credit.

1. The credit of total good time shall be applied in the same manner as described in Procedure III.D.1. and Procedure III.D.2. above.
2. The total of the reductions in Procedure III.D.1 and Procedure III.D.2. above, plus jail credit and blood credit, shall be deducted from the maximum term to determine the date when the discharge from the custody of the state becomes mandatory. Such reductions may be forfeited, withheld and restored by the Warden/Program Administrator after the inmate has been consulted regarding the charges of misconduct.
3. The forfeiture, withholding and restoration of all good time shall be administered the same as outlined in Procedure III.D.5 and Procedure III.D.6. above.

H. In addition, there are many other terms which effect the computation of sentences. The terms are defined as follows:

1. 30-Day Month - All increments of 30 days will be treated as a calendar month for time calculation purposes. Increments of 15 days will be treated as ½ month for time calculation purposes.
2. Jail Time Credit - Jail time credit is awarded by the sentencing judge to give credit for time spent in custody prior to sentencing. Jail time is usually awarded as a specific number of days. These days are converted to years, months and days based on a 30-day month and are deducted from both the minimum and maximum terms. If the commitment order awards jail time from the date of sentence back to a specific prior date, records office personnel will compute the credit. The two dates will be subtracted from each other using a 30-day month to project the amount of credit. In addition, if jail time credit is specifically awarded on each count of consecutive sentences, the jail time credit shall be added together.
3. Backdated Sentences - Occasionally sentence beginning dates are backdated. This usually occurs one of two ways. The first situation arises when the sentencing judge orders the sentence "deemed to commence" at a specific prior date. The other situation is a 90-day evaluator who receives a period of incarceration upon completion of his/her evaluation. Nebraska statutes require the new sentence to commence at the beginning of the original 90-day evaluation. The above procedure shall only apply to inmates who have remained in custody between the two dates referred to above.
4. Dead Time - Dead time is added for the amount of time an inmate is not available to serve his/her court-imposed sentence. Not available means the

	ADMINISTRATIVE REGULATION Department of Correctional Services State of Nebraska	NUMBER 104.01	Page 12 of 14
		INMATE RECORDS MANAGEMENT	

inmate's whereabouts is unknown, out on bond, or he/she may be in custody in another jurisdiction. Dead time is computed on inmates as a result of an escape, release on bond or a parole violation. The amount of dead time is computed by subtracting the date the inmate leaves NDCS custody or absconds to the date the inmate becomes available to NDCS. Inmates apprehended in other states will normally become available to NDCS the date they sign voluntary extradition back to Nebraska. If the inmate refuses to sign extradition, dead time is computed to the date returned to NDCS custody.

5. Parole Good Time – Parole good time will be calculated from the date of parole until the parole has been revoked by the Board of Parole.
6. Forfeiture/Restoration of Good Time - Upon forfeiture of good time for disciplinary reasons, all good time not affecting parole eligibility shall be taken first. This shall be accomplished in the following manner depending upon the good time law governing the inmate's sentence. Good time that is restored shall be restored in the reverse manner in which it was forfeited.

1996 Law (LB 371) - Good time lost for disciplinary reasons can only be forfeited from the maximum term. No good time forfeited for disciplinary reasons may be forfeited from the minimum term.

1992 Law (LB 816) - On indeterminate sentences where there is more good time awarded on the maximum term, good time shall be forfeited from the maximum term only until the good time remaining on the maximum term is equal to the amount of good time awarded on the minimum term. When both good times are equal, additional forfeitures of good time shall be deducted from both the minimum and maximum terms.

1975 Law (LB 567) - All meritorious good time on the maximum term shall be taken until all meritorious good time is forfeited. Once this good time is taken, additional forfeitures of good behavior good time will be deducted from both the minimum and maximum terms. However, good behavior good time forfeited on the minimum term cannot exceed the amount originally awarded. Once the inmate is at full term on the minimum term, any remaining good behavior good time will be deducted from the maximum term until all awarded good time is forfeited.

1969 Law (LB 1307/1499) - All forfeitures of good time affect both the minimum and maximum terms. However, good time forfeited on the minimum term cannot exceed the amount of good time awarded on the minimum term.

Pre-1969 Law - The same procedures for the 1969 law also apply to this law.

I. Additional Sentences

Occasionally an inmate serving a sentence within NDCS receives additional sentences during his/her period of incarceration. These sentences may be either concurrent or consecutive to terms presently being served. Based on a Supreme Court ruling in Nelson vs. Wolff, sentences received after the first sentence is imposed are to be served consecutively unless specifically stated otherwise.

	ADMINISTRATIVE REGULATION Department of Correctional Services State of Nebraska	NUMBER 104.01	Page 13 of 14
		INMATE RECORDS MANAGEMENT	

1. Consecutive sentences.

Current Nebraska statutes provide for adding together the minimum and maximum terms of consecutive sentences. These terms are added together to project a parole eligibility date (PED) and tentative release date (TRD) on the combined sentences.

2. Concurrent sentences.

These terms are calculated independently from any other terms. A TRD and PED should be calculated on the concurrent term and compared with the TRD and PED on the term(s) already being served. The sentence which lasts the longest shall become the "precedent" sentence for time calculation purposes. Occasionally the "precedent" sentence for PED and TRD may not be the same term. Furthermore, there are situations in which the "precedent" sentence may revert back to the other term(s). These matters should be discussed with the NDCS Records Administrator for proper clarification.

IV. COURT RECORDS

Inmates may request transcripts and/or bills of exception directly from the Nebraska District Courts, Court of Appeals, or Supreme Court. The Nebraska Supreme Court has adopted rules for obtaining these documents. This procedure applies to incarcerated litigants. All requests for these documents must be made directly by the inmate to the appropriate court. The court may send the inmates copies of the requested documents. Original Court documents will no longer be sent to inmates. NDCS will not request records for inmates, nor act on their behalf. Whether or not a transcript is issued is up to the Court.

REFERENCE

- I. STATE STATUTE - §83-1,105; §83-1,106; §83-1,170; §83-1,178; §83-1,197
 §29-2632 Laws 1921, 1922, 1929 (pre-1969 good time law);
 §83-1,107 Laws 1969 (LB 1307 good time law; Laws 1972 (LB 1499 good time law); Laws
 1975 (LB 567 good time law); Laws 1992 (LB 816 good time law); Laws 1995 (LB 371 good
 time law); Laws 1997(LB 364 good time law)
- II. LITIGATION - Wray V. Clarke 4:CV93-3275
- III. ATTACHMENTS - Order of filing sheet, Inmate Management File Audit Form
- IV. AMERICAN CORRECTIONAL ASSOCIATION (ACA) STANDARDS
 - A. Standards for Adult Correctional Institutions (ACI) (4th edition): 4-4095, 4-4096, 4-4097, 4-4098, 4-4099, 4-4100 and 4-4101.
 - B. Performance Based Standards for Adult Community Residential Services (ACRS) (4th edition): 4-ACRS-6A-10, 4-ACRS-7D-08, 4-ACRS-7D-09, 4-ACRS-7D-10, 4-ACRS-7D-11
 - C. Performance Based Standards for Adult Probation and Parole Field Services (APPFS) (4th edition): 3-3029, 3-3070, 3-3101, 3-3102, 3-3103, 3-3104, 3-3105, 3-3106, 3-3108, 3-3110 and 3-3141.

	ADMINISTRATIVE REGULATION Department of Correctional Services State of Nebraska	NUMBER	Page
		104.01	14 of 14
		INMATE RECORDS MANAGEMENT	

D. Standards for Administration of Correctional Agencies (CO) (2nd Edition): 2-CO-1E-09

1998 Law (Commonly known as LB 364 - Effective July 1, 1998)

This law is composed of two types of releases and one type of good time.

1. Discretionary parole by the Board of Parole - Eligibility is based on serving one-half of the minimum term (statutory or court-imposed minimum, whichever is longer). **EXCEPT**, no reduction of sentence shall be applied to any sentence imposing a **MANDATORY minimum term**.
2. Mandatory Discharge - Discharge is based on the block crediting of six month's good time for each year of the maximum term, and pro rata thereof for any part which is less than a year. This good time plus any jail time is deducted from the maximum term of imprisonment to establish the mandatory discharge date.
3. Good time reductions granted above may be forfeited, withheld and restored by the Warden/Program Administrator with approval of the Director after the inmate has been consulted regarding charges of misconduct.

1975 Law (Commonly known as LB 567 - Effective August 24, 1975)

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2. Mandatory discharge by the institution with block credits of
 - a. Good behavior good time at the rate of two months for the first year, two months for the second year, three months for the third year and four months for each succeeding year of the term and pro rata for any part thereof which is less than a year.
 - b. Meritorious good time of two months for each year of the sentence.Both types of creditable good time plus jail time, if any, deducted from the full time establishes the mandatory discharge date.
3. Such reductions of the above terms may be forfeited, withheld and restored by the Warden/Program Administrator with the approval of the Director after the inmate has been consulted regarding the charges of misconduct.

**State of Nebraska
Workplace Investigation**

Statement of George Green

On July 29, 2014, I participated in an interview with attorneys from Jackson Lewis, P.C. I was informed these attorneys were hired by the State of Nebraska to conduct a workplace investigation.

Prior to the interview, I was advised that my participation was voluntary, that Jackson Lewis, P.C. does not represent me in this matter and that any information I provided may be shared with and used by the Director of the Department of Correctional Services, Michael Kenney, and the Director of the Department of Personnel, Ruth Jones.

I understand that that the State of Nebraska did not waive its attorney-client privilege with me for the purpose of my workplace interview. I do not believe that I provided any information during my interview which would be subject to attorney-client privilege between me and the State of Nebraska. I did not intend to provide privileged information during my interview.

My workplace interview was not recorded. The statement below is a summary of the information I provided and not a complete transcript.

I had the opportunity to personally edit the statement below prior to signing.

I agree that the information below is true and correct.

I was hired as an attorney for the State of Nebraska, Department of Correctional Services ("NDCS") in 1987. I have been General Counsel for NDCS since 1992. I have no disciplinary history as a State of Nebraska employee.

As General Counsel, I supervise four employees: Sharon Lindgren, Attorney III; Kathy Blum, Attorney III; Betty Jo Williams, Administrative Assistant III, and Sandy Nash, Word Processing Specialist.

As General Counsel, I serve as the administrator of our "law firm." I communicate with the Director of NDCS on legal issues, I oversee the legal work of Sharon Lindgren and Kathy Blum, and I give legal opinions of a variety of issues affecting NDCS. I also handle, among others, legislative issues, employee relations issues, collective bargaining, legal questions from wardens and executives, settlement of lawsuits and claims, civil rights issues and employee disputes.

I report to the Director of NDCS.

The NDCS Legal Division communicates regularly with the Nebraska Attorney General's Office. The NDCS Legal Division relies upon the Attorney General's Office to advise the Department on the effect of court decisions. See Attachment E. The Attorney General's office actively advises DCS of court decisions regarding sentencing calculations. See Attachment E. There is no particular Assistant Attorney General assigned to work with NDCS. We communicate with Assistant Attorneys General who handle civil rights issues, civil litigation and criminal appeals.

Linda Willard is a former Assistant Attorney General who handled inmate litigation. She worked with NDCS on a regular basis. She is well respected and handled a very large volume of cases before her retirement.

The NDCS Legal Division is not tasked with calculating the sentences of prisoners or determining release dates for prisoners. Prison sentences are decided by judges, who issue sentencing and commitment orders. The NDCS Records Division is tasked with reviewing sentencing and commitment orders and calculating prisoners' actual sentences and release dates.

Employees in the Records Division may occasionally ask attorneys in the Legal Division to assist with interpretation of an incomplete sentencing order or with a legal question about a sentencing order, but this occurs fairly rarely.

It is my understanding that, in preparing sentence calculations, the Records Division relies on a group of written documents which may include Nebraska statutes, administrative regulations, past Attorney General opinions, court cases, and internal memoranda. It is my understanding that the Records Division sometimes applies case law or Attorney General opinions without consulting with the Legal Division. The Legal Division is involved only when specifically consulted on sentencing issues.

It is my understanding that Records Division employees sometimes speak directly with prosecutors or defense attorneys on sentence calculation matters without involving the Legal Department. Records Division employees may also speak directly to Assistant Attorneys General on sentencing issues, though it would be a better practice to speak with the Legal Division first.

I am now aware that on February 8, 2013, Linda Willard sent an email to Kyle Poppert and Jeannene Douglass with the Nebraska Supreme Court's decision in *State v. Castillas* attached. Linda Willard did not send the decision to me.

On the afternoon of February 8, 2013, Jeannene Douglass sent an email to me claiming, in summary, that the Records Division was not calculating mandatory release dates in the manner detailed in *State v. Castillas*. This email is enclosed with this statement as "Attachment A." In her email, Douglass noted that she conferred with Linda Willard on the matter and that Willard agreed NDCS should continue its current practice. Willard was copied on the email. In her

email, Douglass' asked for my thoughts on the *Castillas* case but I did not respond to Douglass directly since Willard was also copied on the email. I intended to follow up with Kyle Poppert.

On Friday, February 15, 2013, I spoke in person to Kyle Poppert about the *Castillas* case. I asked Kyle if there was a problem and I believe he indicated that things were fine and that the Records Division was following the law. However, I recall Kyle also told me he would schedule a meeting on the issue.

On February 15, 2013, I printed the February 8, email from Jeannene Douglass (Attachment A) and placed it on my desk with a sticky note indicating Kyle Poppert would schedule a meeting on it. I believed that it was in Kyle's court to schedule a meeting at that point.

I did not have immediate concern about the *Castillas* case because Linda Willard was copied on Douglass' email (Attachment A) stating she agreed NDCS should continue its current practice and because Kyle Poppert assured me the Records Division was following the law. I trusted the judgment and expertise of both Kyle Poppert and Linda Willard.

I am now aware that other emails were exchanged between Linda Willard and Jeannene Douglass on February 8, 2013. At the time, I did not receive all of the emails exchanged between Jeannene Douglass and Linda Willard on the *Castillas* case. If I had, I may have taken action in addition to speaking with Kyle Poppert.

I do not recall consulting with former NDCS Director Bob Houston regarding the *Castillas* case. I do not recall that the matter raised an alarm in my mind such that elevation to the Agency Director was necessary.

During my interview, I reviewed an email dated March 11, 2013 from Jeannene Douglass to Kyle Poppert. The email is included as "Attachment B" with this statement. A 1996 memorandum from Ron Riethmuller regarding mandatory minimum sentence calculations was attached to the email. My name is on the "cc" line of the email in the copy I was provided during my interview (Attachment B), but I do not recall receiving the email and was not consulted about the email. I have no recollection of receiving the email included as Attachment B with this statement.

During my interview, I reviewed an email dated April 5, 2013, from me to Robert Houston. This email is included as "Attachment C" with this statement. A statute is attached to the email. I believe I provided the statute to Houston in preparation for a meeting on potential legislative changes to the statute. I do not believe I provided the statute to Houston in preparation for a discussion about the *Castillas* case. I do not recall that I discussed the *Castillas* case with Houston at any time.

On October 31, 2013, I attended a meeting the members of the Records Division. I know that the meeting was called a "Sentencing Committee" meeting, but this was the only meeting of

that committee of which I am aware. I am not aware of a standing "Sentencing Committee" at NDCS.

During the October 31, 2013 meeting, Nikki Peterson took notes of the meeting. I recall Nikki being in the meeting and taking notes, but I do not recall reviewing her minutes at the time.

I did not render a legal opinion about the effect of the *Castillas* decision on NDCS sentencing calculations. I do not recall that I was asked to render an opinion. It appeared to me that Linda Willard already provided an opinion on the issue. In addition, I did not believe our Legal Division had any authority to interpret the decision, particularly if an Assistant Attorney General was already consulted. I consider sentencing issues to be a part of the core business of the Attorney General's office.

In my interview, I was provided a copy of meeting minutes from the Sentencing Committee meeting October 31, 2013. Those minutes are included as "Attachment D" with this statement. I read the summary of the Sentencing Committee discussion on *State v. Castillas*, including the "Status" section, which states, "we need to clarify exactly what the Supreme Court's intention is on this, before we as a department act." I have no idea what that means. I do not recall that I, or anyone else, was tasked to follow up on this issue.

I do not believe that I made a mistake in handling the events surrounding the *Castillas* case. Based on the email I received from Jeannene Douglass with copy to Linda Willard (Attachment A), and based on the reassurance Kyle Poppert provided to me in person on February 15, 2013, I assumed the Records Division and Attorney General's office would come to a resolution on this issue.

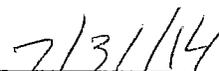
I heard nothing about the *Castillas* case and took no action with regard to the *Castillas* case until June 2014, when the Omaha World Herald contacted Michael Kenney. Since that time, I have not been involved at all in application of the *Castillas* decision to sentencing calculations by NDCS or in the recalculation of prison sentences.

I have no additional information I would like to offer in this statement.

The statement provided above was voluntary. I had the opportunity to make changes to the statement before signing.

By signing this statement, I agree the contents are true and correct.


George Green


Date

Poppert, Kyle

From: Douglass, Jeannene
Sent: Friday, February 08, 2013 2:09 PM
To: Green, George
Cc: Willard, Linda; Poppert, Kyle
Subject: David G. Castillas 74035



David Castillas,
74035.pdf

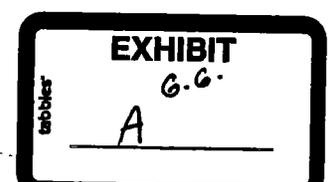
I have been in conversation with Linda Willard regarding the attached Supreme Court decision regarding the calculations of mandatory minimum sentences. While I agree with, and we are currently calculating the mandatory minimum terms in the manner expressed in this decision, we do not calculate the discharge date in the manner described in this decision.

Linda asked me if we would continue to calculate the sentence in the right way or go with what the Supreme Court says. I said, and she supported me, that we would do what is in the inmate's best interest, that being, continue calculating the sentences the way we have always done it. He will serve one-half of the maximum sentence for discharge, as long as the mandatory minimum term required by law is served. If we would calculate this sentence in the manner according to the Supreme Court's decision, Mr. Castillas would serve an additional 12 ½ years (40 years for discharge the way we calculate the sentence; 52 ½ years following the Supreme Court's model). She agreed with me, and suggested that I share this with you, Mr. Green, for your input and expertise in this matter. She also said the inmate, obviously, would not complain since he will serve less time by our calculations. (It would also serve the Director's desires, as well, to not increase our population any more than we must.)

I am available if you have any questions concerning this issue.

Thank you.

Jeannene Douglass
Records Manager II
Central Records Office
Nebraska Department of Corrections
PH: 402-479-5773
E-mail: jeannene.douglass@nebraska.gov



From: Douglass, Jeannene
Sent: Monday, March 11, 2013 2:28 PM
To: Poppert, Kyle
Cc: Green, George
Subject: Mandatory Minimum sentence calculation procedure

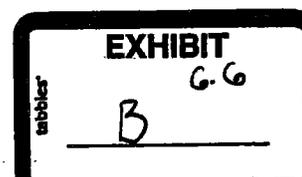


mandatory
minimum mem...

You had asked me for something in writing explaining how we calculate mandatory minimum sentences. I am attaching a memorandum dated 9-18-1996 from Ron Riethmuller, then Records Administrator, regarding our procedures in calculating mandatory minimum sentences. This is the procedure we have been using and has been supported by the Attorney General's Office as well as court opinions.

I hope this information is useful to you in your quest.

Jeannene Douglass
Records Manager II
Central Records Office
Nebraska Department of Corrections
PH: 402-479-5773
E-mail: jeannene.douglass@nebraska.gov



Jal

STATE OF NEBRASKA

DEPARTMENT OF CORRECTIONAL SERVICES

Harold W. Clarke

Director

MEMORANDUM



E. Benjamin Nelson
Governor

DATE: September 18, 1996

TO: Records Staff

FROM: Ron Riethmuller, Records Administrator *RR*

RE: Computing Parole Eligibility and Discharge Dates on Inmates Serving Mandatory Minimums

To comply with the recent Attorney General's Opinion concerning mandatory minimum sentences, the following procedures shall be used to insure that mandatory minimum terms are served.

We will proceed with the procedure as was discussed at the July 12, 1996 records meeting regarding parole eligibility computation. The parole eligibility date is computed based on the inmate serving the entire mandatory minimum term provided by statute plus one-half (1/2) of the balance of any court imposed minimum term beyond the mandatory minimum. For example, a total sentence of 8 to 14 years for a 1DF (mandatory minimum of 3 years) is computed as follows:

Parole Eligibility: Inmate must serve the entire three (3) years PLUS one-half (1/2) of the remaining five (5) years, a total of 5 1/2 years for parole eligibility. This procedure, which complies with the language in LB 371, prohibits awarding of good time on mandatory minimums.

The following procedure will insure that no inmate is discharged prior to serving the mandatory minimum.

1. The discharge date on the maximum term will be compared with the mandatory minimum provided by statute.
2. If the discharge date is prior to the inmate serving the entire statutory mandatory minimum, the discharge date shall be changed to reflect the later date.

Example: If an inmate is sentenced to a term of 3 to 5 years for a 1DF under LB 816, both the parole eligibility and discharge dates would be 3 years.

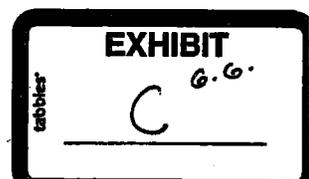
3. If the discharge date on the maximum term is longer than the mandatory minimum, no changes will be made on the discharge date.

I have reviewed the mandatory minimums on all active inmates; this procedure will extend the discharge dates of nine inmates. A list of the affected inmates is attached.

xc: Harold W. Clarke
Larry A. Tewes
George D. Green
Laurie Smith Camp
Manuel S. Gallardo



From: Green, George
Sent: Friday, April 05, 2013 10:15 AM
To: Houston, Bob
Cc: Kroeger, Concha
Subject: statute for Monday meeting at 1200
Attachments: 83-1,107 (2012 Supp).docx



157HRQ

Time of Request: Friday, April 05, 2013 11:08:08 EST
Client ID/Project Name:
Number of Lines: 201
Job Number: 1827:402968356

Research Information

Service: Terms and Connectors Search
Print Request: Current Document: 4
Source: NE - Revised Statutes of Nebraska Annotated
Search Terms: 83-1,107

Send to: Green, George
NEBRASKA DEPT OF CORRECTIONAL SERVICES
FOLSOM & WEST PROSPECT PLACE
BUILDING 1



4 of 7 DOCUMENTS

NEBRASKA REVISED STATUTES ANNOTATED
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*** Current through the 2012 102nd Second Session ***
*** Annotations current through March 1, 2013 ***
*** **

CHAPTER 83. STATE INSTITUTIONS
ARTICLE 1. MANAGEMENT
(f) CORRECTIONAL SERVICES, PAROLE, AND PARDONS

Go to the Nebraska Code Archive Directory

R.R.S. Neb. § 83-1,107 (2012)

§ 83-1,107. Reductions of sentence; personalized program plan; how credited; forfeiture; withholding; restoration.

(1) (a) Within sixty days after initial classification and assignment of any offender committed to the department, all available information regarding such committed offender shall be reviewed and a committed offender department-approved personalized program plan document shall be drawn up. The document shall specifically describe the department-approved personalized program plan and the specific goals the department expects the committed offender to achieve. The document shall also contain a realistic schedule for completion of the department-approved personalized program plan. The department-approved personalized program plan shall be fully explained to the committed offender. The department shall provide programs to allow compliance by the committed offender with the department-approved personalized program plan.

Programming may include, but is not limited to:

- (i) Academic and vocational education, including teaching such classes by qualified offenders;
- (ii) Substance abuse treatment;
- (iii) Mental health and psychiatric treatment, including criminal personality programming;
- (iv) Constructive, meaningful work programs; and
- (v) Any other program deemed necessary and appropriate by the department.

(b) A modification in the department-approved personalized program plan may be made to account for the increased or decreased abilities of the committed offender or the availability of any program. Any modification shall be made only after notice is given to the committed offender. The department may not impose disciplinary action upon any committed offender solely because of the committed offender's failure to comply with the department-approved personalized program plan, but such failure may be considered by the board in its deliberations on whether or not to grant parole to a committed offender.

(2) (a) The department shall reduce the term of a committed offender by six months for each year of the offender's term and pro rata for any part thereof which is less than a year.

R.R.S. Neb. § 83-1,107

(b) In addition to reductions granted in subdivision (2)(a) of this section, the department shall reduce the term of a committed offender by three days on the first day of each month following a twelve-month period of incarceration within the department during which the offender has not been found guilty of (i) a Class I or Class II offense or (ii) more than three Class III offenses under the department's disciplinary code. Reductions earned under this subdivision shall not be subject to forfeit or withholding by the department.

(c) The total reductions under this subsection shall be credited from the date of sentence, which shall include any term of confinement prior to sentence and commitment as provided pursuant to *section 83-1,106*, and shall be deducted from the maximum term, to determine the date when discharge from the custody of the state becomes mandatory.

(3) While the offender is in the custody of the department, reductions of terms granted pursuant to subdivision (2)(a) of this section may be forfeited, withheld, and restored by the chief executive officer of the facility with the approval of the director after the offender has been notified regarding the charges of misconduct.

(4) The department shall make treatment programming available to committed offenders as provided in *section 83-1,110.01* and shall include continuing participation in such programming as part of each offender's parolee personalized program plan.

(5) (a) Within thirty days after any committed offender has been paroled, all available information regarding such parolee shall be reviewed and a parolee personalized program plan document shall be drawn up and approved by the Office of Parole Administration. The document shall specifically describe the approved personalized program plan and the specific goals the office expects the parolee to achieve. The document shall also contain a realistic schedule for completion of the approved personalized program plan. The approved personalized program plan shall be fully explained to the parolee. During the term of parole, the parolee shall comply with the approved personalized program plan and the office shall provide programs to allow compliance by the parolee with the approved personalized program plan.

Programming may include, but is not limited to:

- (i) Academic and vocational education;
- (ii) Substance abuse treatment;
- (iii) Mental health and psychiatric treatment, including criminal personality programming;
- (iv) Constructive, meaningful work programs;
- (v) Community service programs; and
- (vi) Any other program deemed necessary and appropriate by the office.

(b) A modification in the approved personalized program plan may be made to account for the increased or decreased abilities of the parolee or the availability of any program. Any modification shall be made only after notice is given to the parolee. Intentional failure to comply with the approved personalized program plan by any parolee as scheduled for any year, or pro rata part thereof, shall cause disciplinary action to be taken by the office resulting in the forfeiture of up to a maximum of three months' good time for the scheduled year.

(6) While the offender is in the custody of the board, reductions of terms granted pursuant to subdivision (2)(a) of this section may be forfeited, withheld, and restored by the administrator with the approval of the director after the offender has been notified regarding the charges of misconduct or breach of the conditions of parole. In addition, the board may recommend such forfeitures of good time to the director.

(7) Good time or other reductions of sentence granted under the provisions of any law prior to July 1, 1996, may be forfeited, withheld, or restored in accordance with the terms of the Nebraska Treatment and Corrections Act.

HISTORY: Laws 1969, c. 817, § 38, p. 3092; Laws 1972, LB 1499, § 7; Laws 1975, LB 567, § 2; Laws 1992, LB 816, § 2; Laws 1995, LB 371, § 20; Laws 1997, LB 364, § 19; Laws 2003, LB 46, § 20; Laws 2011, LB 191, § 1.

NOTES: EFFECTIVE DATE: March 17, 2011

EFFECT OF AMENDMENTS.

The 2011 amendment added the (2)(a) and (2)(c) designation; added (2)(b); added "under this subsection" in (2)(c); and updated the internal references.

Laws 2003, LB 46, effective May 24, 2003, in (1)(a), deleted "During incarceration, the committed offender shall comply with the department-approved personalized program plan and" following "committed offender", in (1)(b), substituted "The department ... offender" for "Intentional failure to comply with the department-approved personalized program plan by any committed offender as scheduled for any year, or pro rata part thereof, shall cause disciplinary action to be taken by the department resulting in the forfeiture of up to a maximum of three months' good time for the scheduled year", in (2), substituted "department" for "chief executive officer of a facility", in (3), substituted "notified" for "consulted", added (4) and (5) and redesignated remainder of section accordingly, in (6), substituted "notified" for "consulted", and made a stylistic change.

JUDICIAL DECISIONS

ANALYSIS

Applicability
 Forfeiture of credit
 Good time credit
 Indeterminate sentences
 Jurisdiction
 Parole
 Restoration of credit
 Sentencing
 Statutory right

APPLICABILITY

Defendant, who pled guilty to being a habitual criminal and was sentenced under *Neb. Rev. Stat. § 29-2221(1)* to maximum and mandatory minimum sentences of 10 years each, was not entitled to have good time credit under *Neb. Rev. Stat. § 83-1,107(1)* applied so as to reduce his mandatory minimum sentence. *Johnson v. Kenney*, 2002 Neb. LEXIS 243, 265 Neb. 47, 654 N.W.2d 191 (2002).

Where a criminal statute is amended by mitigating the punishment, after the commission of a prohibited act but before final judgment, the punishment is that provided by the amendatory act unless the Legislature has specifically held otherwise. *State v. Schrein*, 247 Neb. 256, 526 N.W.2d 420 (1995).

The new good time law is inapplicable to those offenders who started serving their sentences before the effective date of the statute, absent approval of the board of pardons, even if the offenders are resentenced pursuant to the Convicted Sex Offender Act. *Duff v. Clarke*, 247 Neb. 345, 526 N.W.2d 664 (1995).

The good time provisions are not applicable to persons who started their sentences prior to the effective date of 1975 act, absent approval of the board of pardons. *SapaNajin v. Johnson*, 219 Neb. 40, 360 N.W.2d 500 (1985).

This section applies toward eligibility for parole or release under supervision, rather than for absolute discharge as under previous statutes. *Von Bokelman v. Sigler*, 186 Neb. 378, 183 N.W.2d 267 (1971).

FORFEITURE OF CREDIT

Inmate's release date was miscalculated, because the inmate was sentenced to 25 years and by crediting him with six months of good time per year of such term, plus 159 days for time served, the inmate's mandatory discharge date was 12 years six months from the date on which he was sentenced, when *Neb. Rev. Stat. § 83-1,107(3)* required that a prisoner be credited with good time for participation in a personal program at the beginning of his sentence, based on the maximum sentence at that time, at the rate of three months per year, and such was to be deducted from his maximum term in order to determine his mandatory discharge date in addition to the three months per year of his maximum term for good time under *Neb. Rev. Stat. § 83-1,107(2)*. *Worley v. Houston*, 2008 Neb. App. LEXIS 83, 16 Neb. Ct. App. 634, 747 N.W.2d 639 (2008).

Neb. Rev. Stat. § 83-1,107 did not except the duty to approve the forfeiture of good time from the chief executive officials to delegate duties; the Nebraska Department of Correctional Services, by setting up a practical system of determining the forfeiture of good time with due process preserved, did not abdicate its power and responsibility and preserved its right to make the final decision. *Martin v. Neb. Dep't of Corr. Servs.*, 2003 Neb. LEXIS 179, 267 Neb. 33, 671 N.W.2d 613 (2003), writ of certiorari denied by 540 U.S. 1196, 124 S. Ct. 1451, 158 L. Ed. 2d 110, 2004 U.S. LEXIS 1302, 72 U.S.L.W. 3536 (2004).

There can be a forfeiture of credit for meritorious behavior earned before release on mandatory parole. *Wounded Shield v. Gunter*, 225 Neb. 327, 405 N.W.2d 9 (1987).

Neither mandatory good time earned pursuant to this section nor meritorious good time earned pursuant to former *Neb. Rev. Stat. § 83-1,107.01* (now see § 83-1,108) is automatically forfeited upon revocation of parole; such forfeiture must occur upon either the recommendation of the chief executive officer of the facility to which the offender is entrusted or the parole administrator, depending upon who has custody at the time of revocation, subject to approval of the director of the department of correctional services; once forfeited or withheld, good time credits may be restored to the offender in like manner. *Malone v. Benson*, 219 Neb. 28, 361 N.W.2d 184 (1985).

Pursuant to this section and former *Neb. Rev. Stat. § 83-1,107.01* (now see § 83-1,108) the board of parole merely has the right to make recommendation of forfeitures of good time when the offender is in the custody of the board of parole; the discretion referred to by statute vests solely in the chief executive officer of the facility when the offender is in the custody of the department of correctional services and in the parole administrator when the offender is in the custody of the board of parole, in each instance subject to the approval of the director of the department of correctional services. *Malone v. Benson*, 219 Neb. 28, 361 N.W.2d 184 (1985).

State prisoners can only lose good-time credits if they are guilty of serious misconduct; the procedure for determining whether such misconduct has occurred must observe certain minimal due process requirements consonant with the unique institutional environment and therefore involve a more flexible approach reasonably accommodating the interests of the inmates and the needs of the institution. *Wolff v. McDonnell*, 418 U.S. 539, 94 S. Ct. 2963, 41 L. Ed. 2d 935 (1974).

GOOD TIME CREDIT

When defendant was released on bond in July 2003, he had accumulated more than two years of disciplinary segregation; although *Neb. Rev. Stat. § 83-1,107(3)* allowed for restoration of good time, defendant provided no authority which would suggest he was entitled to such restoration of good time. *State ex rel. Tyler v. Houston*, 2007 Neb. App. LEXIS 15, 15 Neb. Ct. App. 374, 727 N.W.2d 703 (2007).

An inmate's good time should be computed under the version of this section as amended in 1992 where the inmate's convictions and sentences, suspended during the pendency of an appeal pursuant to *Neb. Rev. Stat. § 29-2301*, did not become final until after the effective date of the 1992 amendment. *Jones v. Clarke*, 253 Neb. 161, 568 N.W.2d 897 (1997).

Because city and county jail inmates are not similarly situated to state prison inmates, granting good time credit to the former on an unequal basis with the latter does not violate equal protection. *State v. Atkins*, 250 Neb. 315, 549 N.W.2d 159 (1996).

The good time reductions provided in this section are used to determine eligibility for release on parole or supervision and are subject to forfeiture. *Brown v. Sigler*, 186 Neb. 800, 186 N.W.2d 735 (1971); *Wycoff v. Vitek*, 201 Neb. 62, 266 N.W.2d 211 (1978).

INDETERMINATE SENTENCES

Where an indeterminate sentence has been imposed, a prisoner's earliest possible parole eligibility date under subdivision (1)(a) is to be determined by crediting good behavior time on the basis of the length of his minimum, not his maximum, term. *Ebert v. Black*, 216 Neb. 814, 346 N.W.2d 254 (1984).

JURISDICTION

District court lacked subject matter jurisdiction over mandamus action against department of correctional services by inmate seeking correction of sentence because nothing in the statutes governing mandamus (*Neb. Rev. Stat. §§ 25-2156 through 25-2169*) indicates a legislative intent to waive sovereign immunity for mandamus actions against a state agency. *Henderson v. Department of Correctional Servs.*, 256 Neb. 314, 589 N.W.2d 520 (1999).

PAROLE

If any discrepancy exists between the statement of the minimum limit of the sentence and the statement of parole eligibility, the statement of the minimum limit shall control the calculation of the offender's term. *State v. Glover*, 3 Neb. App. 932, 535 N.W.2d 724 (1995).

Court's statement of minimum sentence controlled the calculation of term, which then determines parole eligibility. A misstatement of parole eligibility cannot be used to "bootstrap" a reduced term of sentence. *State v. Glover*, 3 Neb. App. 932, 535 N.W.2d 724 (1995).

A prisoner who has had his parole revoked after hearing need not be further consulted about the statutory effect of the parole revocation and its effect on the date of his ultimate release from custody before any meritorious good time can be forfeited. *Lytle v. Vitek*, 203 Neb. 825, 280 N.W.2d 654 (1979), modified on other grounds, *Malone v. Benson*, 219 Neb.

28, 361 N.W.2d 184 (1985), and modified on other grounds, *Wounded Shield v. Gunter*, 225 Neb. 330, 405 N.W.2d 9 (1987).

A parolee is only entitled to have credited on his sentence the time elapsing between the date when he was placed on parole and the date of his violation thereof, the date of declaration by the board that the parole had been violated being of no importance in so far as the length of time to be served after violation of the parole is concerned. *Blackwell v. Pszanowski*, 145 Neb. 256, 16 N.W.2d 158 (1944).

RESTORATION OF CREDIT

The chief executive officer, in his discretion, may provide for the restoration of good time which has been forfeited or withheld; however, nothing in this section compels the chief executive officer to provide for the restoration of all good time which is forfeited or withheld. *Wycoff v. Vitek*, 201 Neb. 62, 266 N.W.2d 211 (1978).

SENTENCING

The fact that a sentencing judge announces that in imposing sentence he has considered the possible effect of statutes which make it possible for prison authorities to ameliorate the sentence does not, in and of itself, violate the due process provisions of the state and federal constitutions. *State v. Houston*, 196 Neb. 724, 246 N.W.2d 63 (1976).

STATUTORY RIGHT

The elimination or withholding of statutory or meritorious good time cannot be imposed as punishment, except in flagrant or serious cases of misconduct, such as assault, escape, or attempt to escape. The reduction of a sentence "for good behavior and faithful performance of duties" is a mandatory requirement and that reduction of sentence, therefore, becomes a statutory right, as opposed to a mere privilege. *Sawyer v. Sigler*, 320 F. Supp. 690 (D. Neb. 1970), aff'd, 445 F.2d 818 (8th Cir. 1971).

UNPUBLISHED OPINIONS

FORFEITURE OF CREDIT

Dismissal of an inmate's petition for a writ of habeas corpus was proper because the law did not require the director of correctional services to personally approve the warden's recommendation of forfeiture of good time. *Tyler v. Warden*, 2003 Neb. App. LEXIS 166 (2003).

OPINIONS OF THE ATTORNEY GENERAL

ANALYSIS

Good time credit.

Personalized program plan

GOOD TIME CREDIT.

The statutory good time credits provided by Laws 1995, LB 371, apply only to sentences imposed for crimes committed on or after July 1, 1996. 1997 Op. Atty. Gen. No. 5.

PERSONALIZED PROGRAM PLAN

The department of correctional services may hold an inmate responsible for intentional failure to comply with his personalized program plan when the inmate has failed to comply with the plan as a result of being placed in segregation. 1999 Op. Att'y Gen. No. 42.

USER NOTE: For more generally applicable notes, see notes under the first section of this heading.

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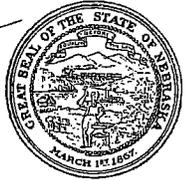
Number of Pages:

Send To: Green, George
NEBRASKA DEPT OF CORRECTIONAL SERVICES
FOLSOM & WEST PROSPECT PLACE
BUILDING 1



STATE OF NEBRASKA

Department of Correctional Services
Dave Heineman, Governor
Michael Kenney, Director



Date: October 31st, 2013

Time: 9am

Subject: Sentence Review Committee Meeting Minutes

Present: Kyle Poppert, Kathy Blum, Jeff Beatty, Mickie Baum, George Green, Sharon Lindgren, Ginger Shurter, Nikki Peterson,

Absent: NONE

Agenda:

Current Business:

State v. Banes- Sentences: When concurrent sentences are imposed the jail time credit (JTC) is applied against EACH concurrent sentence, because the longest sentence determines the offender's actual length of time in prison.

Issue: Current calculations provide the JTC only applied to the initial sentence.

Status: Mickie Baum is currently auditing sentences to catch all changes. This list of changes is very long; currently Mickie is the only staff working on this list. As facilities records staff are able, the list will be broken down by facility.

Conclusion: We audit these sentences to our best abilities. If a judicial issue arises as a result we will handle it then.

DUI- Mandatory Minimum: State Statue language interpretation of "at least" meaning a mandatory minimum sentence.

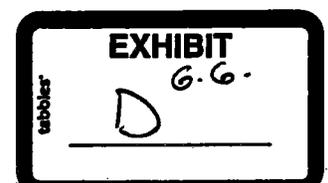
Status: Mickie Baum is currently working recalculating sentences for NSP and OCC, all other facilities are complete.

Conclusion: Again, audit to the best of our abilities. Notify the inmates of the changes. And provide them with a consistent response when questions arise.

George Shepard v. Houston- District Court Decision- Shepard a sex offender who will be required to serve his full term for failing to provide his DNA as outlined in the DNA Identification Act effective July 15, 2010. District Court ruled unconstitutional for the DCS to withhold any good time.

Issue: There are 28 other inmates who fall under this criteria.

Conclusion: Will the Attorney General appeal the decision. Future issues could arise from this case.



Hatten 78546: Wrote an Inmate interview request to the Records Administrator to have his sentenced reviewed for a Jail time Credit with the intention he deserved a lesser sentence. Mickie Baum reviewed his sentence and noticed the sentence was indeed entered into CTS incorrectly.

Status: Mickie has recalculated the sentence. She discovered the new calculation actually increased Hatten's #78546 length of stay.

Conclusion: The sentence should be calculated correctly, then give notification to the inmate and appropriate staff at WEC. Hatten #78546 is currently housed at the WEC, based off new calculations he is no longer qualified for the program. And will soon be transferred to the NSP.

State v. Castillas: The Nebraska Supreme Court affirmed the district court's decision; however the Supreme Court has made an assumption of how the DCS is calculating sentences on the maximum term when there is a mandatory minimum.

Issue: Our current practice is different than that of the court's assumption.

Status: We need to clarify exactly what the Supreme Court's intention is on this, before we as a department act.

Conclusion: We have been performing calculations our current way for years. We are now aware of this situation, we will act when we are specifically told our current way is wrong and it needs to be changed.

New business:

Revised State Statute 83-187- The DCS currently complies with sections (1) and (2) but not in compliance with section (3) the DCS shall provide a copy of the discharge to the court, county sheriff, and local police department if applicable.

Issue: There is no consistency with contact persons to be able to provide these copies.

Possible solution: Develop a template of "Inmate Release or Discharge" to include his release date, that will notify county courts and sheriffs. This notification includes Parolees and Discharges, will not to include the death of an inmate or RFP. Possibly develop an automated system that would send out weekly notifications AFTER the inmate has ACTUALLY been released from a facility. Aim to implement by December 1st, 2013. Have Legal proof the template before its implemented.

Attorney General opinion regarding State Ombudsman reviewing of inmate files. Per state statute the Ombudsman office is allowed access to inmate files. Due to confidentiality purposes copies made from inmates file should not be shared and solely used by the ombudsman.

Solution: If the ombudsman office needs a copy of any documents from an inmate's file, require them to send us an email requesting specific documents and we shall provide them. This is to protect records staff by showing a date and time the request was received and what exact documents were provided. (Notify Director Kenney prior to making this change.)

Next Meeting: TBA



From: Forch, Jessica
Sent: Tuesday, May 14, 2013 9:21 AM
To: Green, George
Subject: RE: Chad Svoboda CI 13-1518

George-

I just talked with Linda and I think I am going to file an answer with a motion to dismiss because it is moot. I am also considering doing a motion for summary judgment. I'll work on it this morning and get back to you.

We also discussed our thoughts on other cases that may arise because of this issue. We don't think corrections has any duty to go out and search for these appeals, but when an inmate alerts to you to a final determination (either through an inmate interview request or through a declaratory judgment action), staff should know to pass that information on to records to determine whether to change their sentencing calculation.

Thanks for all your help.

Jessica M. Forch
Assistant Attorney General
2115 State Capitol
Lincoln, NE 68509
(402) 471-1845
Jessica.Forch@nebraska.gov

From: Green, George
Sent: Tuesday, May 14, 2013 8:50 AM
To: Forch, Jessica
Subject: Fwd: Chad Svoboda CI 13-1518

Is this moot? How do we handle this?

*George D. Green, General Counsel
Nebraska Department of Correctional Services
Office: 402-479-5735
connected by Motorola*

----- Original Message -----

Subject: RE: Chad Svoboda CI 13-1518
From: "Poppert, Kyle" <Kyle.Poppert@nebraska.gov>
To: "Forch, Jessica" <jessica.forch@nebraska.gov>, "Douglass, Jeannene" <Jeannene.Douglass@nebraska.gov>, "Baum, Mickie" <Mickie.Baum@nebraska.gov>, "Green, George" <George.Green@nebraska.gov>
CC:

Jessica,

We reviewed this and he is correct. We were aware of the appeal but were unaware of the final disposition. I am out of the office this week. When I return I will send Chad a letter and explain the situation. His sentence has been changed to reflect LB 191. His earned discharge date is now 12-22-2013.

Kyle

Kyle J. Poppert, Administrator
Nebraska Department of Correctional Services
Classification, Inmate Records, Warrants & Extraditions
Phone: (402) 479-5750
Cell: (402) 326-2423
Fax: (402) 742-2349
Kyle.Poppert@nebraska.gov

Change is inevitable, growth is optional.

From: Forch, Jessica
Sent: Monday, May 13, 2013 1:55 PM
To: Poppert, Kyle
Subject: Chad Svoboda CI 13-1518

Kyle,

I am working on a case right now about sentence calculations and I don't really understand how it all works. I believe George Green was going to discuss this with you as well.

In this case, Chad Svoboda is arguing that he should have been sentenced under LB 191 (effective on 3/16/11) because his final appeal was affirmed on 5/4/11. At this point, Svoboda is out on parole. What I am wondering is whether anything would change with his parole if we changed the law under which he is sentenced? For example, could it shorten the amount of time he is on parole? As I read LB 191, I don't see how it would change anything.

If you think it would be easier to explain over the phone, please feel free to contact me at the number below. Thank you for your help.

Jessica M. Forch
Assistant Attorney General
2115 State Capitol
Lincoln, NE 68509
(402) 471-1845
Jessica.Forch@nebraska.gov

From: Microsoft Outlook on behalf of Forch, Jessica
Sent: Tuesday, May 14, 2013 9:21 AM
To: Green, George
Subject: RE: Chad Svoboda CI 13-1518
Attachments: RE: Chad Svoboda CI 13-1518

Sender: jessica.forch@nebraska.gov

Subject: RE: Chad Svoboda CI 13-1518

Message-Id: <52AFF2BD9B6F2F42B773A439F14970AB121502E3@STNEEX10MB04.stone.ne.gov>

To: George.Green@nebraska.gov

**State of Nebraska
Workplace Investigation**

Statement of Sharon Lindgren

On July 30, 2014, I participated in an interview with attorneys from Jackson Lewis, P.C. I was informed these attorneys were hired by the State of Nebraska to conduct a workplace investigation.

Prior to the interview, I was advised that my participation was voluntary, that Jackson Lewis, P.C. does not represent me in this matter and that any information I provided may be shared with and used by the Director of the Department of Correctional Services, Michael Kenney, and the Director of the Department of Personnel, Ruth Jones.

I understand that that the State of Nebraska did not waive its attorney-client privilege with me for the purpose of my workplace interview. I do not believe that I provided any information during my interview which would be subject to attorney-client privilege between me and the State of Nebraska. I did not intend to provide privileged information during my interview.

My workplace interview was not recorded. The statement below is a summary of the information I provided and not a complete transcript.

I had the opportunity to personally edit the statement below prior to signing.

I agree that the information below is true and correct.

I have been an attorney with the Nebraska Department of Correctional Services ("NDCS") for approximately 13 years. I was in private practice for a time before I worked for NDCS. Before I went into private practice, I worked in the Attorney General's office for approximately 13 ½ years. I also ran the criminal legal clinic at the University of Nebraska at Lincoln for a time and worked for a year at the Department of Revenue.

As a NDCS attorney, my main functions are to respond to Step 2 inmate grievances, handle tort claims, handle disciplinary appeals, address personnel actions and to answer miscellaneous questions. Anyone, from any NDCS department, can come to the Legal Division with a question. We often, though not always, discuss issues among the three NDCS attorneys to reach a consensus.

The NDCS Legal Division is occasionally asked a question about sentencing calculations. These would include, but may not be limited to, questions about how to apply an incomplete sentencing order or how to interpret a sentencing order in light of certain cases or statutes.

Inmates also occasionally grieve a sentence calculation. If that occurs and the grievance reaches step two, I would be involved. However, this is a very rare occurrence.

It appears to me that the NDCS Records Division may be communicating directly with the Attorney General's Office on sentencing calculation issues in addition to asking questions of our Legal Division. I was not aware this was happening until recently. In my experience, it would be more customary for Assistant Attorneys General to speak with a NDCS attorney on agency issues.

It also appears to me that NDCS Records Managers have been interpreting a body of case law, statutes and Attorney General Opinions, and applying them to sentencing calculations, sometimes without legal advice. More communication between the Legal Division and the Records Division needs to occur on these issues.

I became aware of the Nebraska Supreme Court's decision in *State v. Castillas* on October 31, 2013. I recall attending a Sentencing Committee meeting that day. I remember parts of the meeting, but not all of the meeting. I recall that we discussed the *Castillas* case in the meeting and it seemed to me that others had already discussed the case prior to the meeting. It seemed to me that others had already reached a decision on how to handle the *Castillas* case before the meeting.

I do not recall that anyone was tasked to follow up on the *Castillas* case after the October 31, 2013, meeting. I do not recall speaking at the meeting myself and I do not recall any specifics of the discussion. I do not recall any discussion that the fact that NDCS was not a party to the case made any difference in whether or not we applied to it the work of NDCS. Clearly that was not the case.

I did not read the *Castillas* decision prior to the October 31, 2013, meeting. I wish I had, but there was nothing to indicate it was anything other than a criminal appeal. NDCS was not a party to the case. If someone would have sent the decision to me and highlighted the fact that the way Records Managers were calculating Mandatory Release Dates was not the same as the process set forth in the decision, I would have provided advice or followed up. I know how to perform sentence calculations from the time I spent in the Attorney General's Office and I could have provided advice on this issue. I was not asked for legal advice on the *Castillas* case at the time.

I first read the *Castillas* case in June 2014, the day I learned the Omaha World Herald was writing an article about it. When I read the decision, I thought to myself that NDCS should have been performing the mandatory release calculations the way the Court indicated all along.

I think several people made mistakes with regard to application of the *Castillas* case.

I shared an office with Linda Willard in the Attorney General's office for a time and we are friends. I do not think Linda should have been communicating directly with Douglass and Poppert on this issue. She should have conveyed the decision to someone at a higher level.

I believe George Green should have read the *Castillas* case, then brought it to someone else's attention. Again, I have the ability to work through sentence calculations. However, I know that Green went to Poppert and discussed the situation. This is clear because Poppert sent an email to Douglass and Ginger Shurter asking them to provide Green with more information.

I should have read the *Castillas* case sooner, but I did not see anything cuing me in that it was anything other than a criminal appeal.

I do not think anyone made an intentional decision to disregard case law that was applicable to NDCS sentence calculations. I believe NDCS employees probably thought the way they always did things was correct, given the number of years they had been calculating sentences the same way. The issue was a misinterpretation of the statute, not an intentional disregard for case law.

I have no additional information I would like to offer in this statement.

The statement provided above was voluntary. I had the opportunity to make changes to the statement before signing.

By signing this statement, I agree the contents are true and correct.



Sharon Lindgren

7-31-14

Date

**State of Nebraska
Workplace Investigation**

Statement of Kathy Blum

On July 30, 2014, I participated in an interview with attorneys from Jackson Lewis, P.C. I was informed these attorneys were hired by the State of Nebraska to conduct a workplace investigation.

Prior to the interview, I was advised that my participation was voluntary, that Jackson Lewis, P.C. does not represent me in this matter and that any information I provided may be shared with and used by the Director of the Department of Correctional Services, Michael Kenney, and the Director of the Department of Personnel, Ruth Jones.

I understand that that the State of Nebraska did not waive its attorney-client privilege with me for the purpose of my workplace interview. I do not believe that I provided any information during my interview which would be subject to attorney-client privilege between me and the State of Nebraska. I did not intend to provide privileged information during my interview.

My workplace interview was not recorded. The statement below is a summary of the information I provided and not a complete transcript.

I had the opportunity to personally edit the statement below prior to signing.

I agree that the information below is true and correct.

I have been an attorney for the Nebraska Department of Correctional Services ("NDCS") since 1997. I have also been a mental health counselor for NDCS.

The general areas I handle as an NDCS attorney include: religious issues, mental health issues, Nebraska Equal Opportunity Commission charges, records requests, sex offender issues and inmate discipline. I also answer miscellaneous questions. Anyone, from any NDCS department, can come to the Legal Division with questions. We generally do not provide formal written opinions.

I generally do not handle questions about inmate sentencing or sentence calculations. This is not my area of expertise. Records Division employees may ask those questions of the other NDCS attorneys, but generally do not bring these questions to me.

I do not believe there is a protocol as to whether Records Division employees should contact the Attorney General's Office or the NDCS Legal Division with questions on sentence calculation issues.

I know that Jon Freudenberg from the Attorney General's Office emailed me a copy of the *State v. Castillas* decision on February 19, 2013. That email is included with this statement as "Attachment A." My recollection is that I was in a meeting discussing sex offender management with Freudenberg and mental health and administrative staff from HHS & DCS prior to the decision in *Castillas* being filed. In casual conversation, he mentioned that the Attorney General's Office had a case before the Supreme Court regarding a criminal appeal that included a sentencing issue.

I did not read the *Castillas* decision at the time Freudenberg sent it to me. There was nothing about my conversation with Freudenberg or his email to me that indicated the *Castillas* case was anything more than a criminal appeal. I was not the normal person the Attorney General's Office would contact on a sentencing issue, so I did not think to review the *Castillas* case at the time.

I attended a meeting of the Sentencing Committee on October 31, 2013. There was only one Sentencing Committee meeting. I recall being in the meeting and that the *Castillas* case was discussed. However, I recall that the discussion was very short. I did not speak about the case. It was my impression that others had spoken about the case prior to the meeting and were addressing the matter. I have no recollection of a discussion about the legal impact of the decision. I think Kyle Poppert may have asked George Green, "Do we have any more on this?" and that George may have responded that he did not, but I can't be sure. I do not recall whether anyone was tasked to follow up on the *Castillas* case.

I reviewed the minutes of the October 31, 2013, Sentencing Committee meeting during my interview. Those minutes are included as "Attachment B" with this statement. I do not recall enough about the meeting to know whether the minutes are an accurate reflection of what occurred in the meeting. I know that Nikki Peterson was taking notes during the meeting.

I took no action with regard to the *Castillas* case after the October 31, 2013, meeting. I had the impression that it was being addressed.

I first read the *Castillas* case in June 2014, after the Omaha World Herald published an article about NDCS sentence calculations.

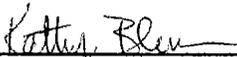
I think that if any one person at NDCS would have done something differently with regard to the *Castillas* case, NDCS would be in a better position. It's hard to attribute a mistake like this to any one person. I wish I would have read the decision and realized the impact, but this was not my area of expertise and I did not pick up on the significance. If I would have known the significance, I would have taken the issue to George Green for resolution.

I have seen some discussion in the media recently indicating that I should have known that NDCS was miscalculating mandatory release dates after we received a decision in the Christopher Lohman case. I want to be clear that in the Lohman case, we were missing information about Lohman being a habitual criminal. When we received that information, it was applied pursuant to the law. That is a completely different issue that was clarified in *State v. Castillas*.

I have no additional information I would like to offer in this statement.

The statement provided above was voluntary. I had the opportunity to make changes to the statement before signing.

By signing this statement, I agree the contents are true and correct.



Kathy Blum

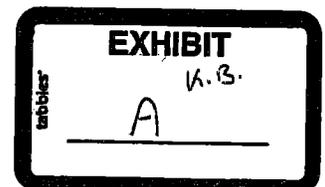


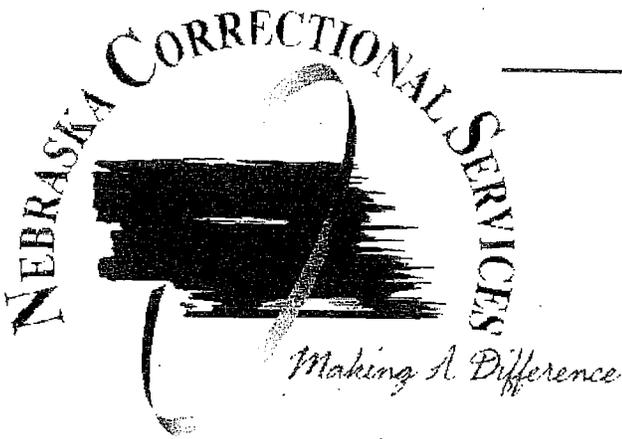
Date

From: Freudenberg, John
Sent: Tuesday, February 19, 2013 2:09 PM
To: Blum, Kathy
Subject: Case citation

The case citation to which I was referring to earlier is *State v. Castillas*, 285 Neb. 174 (2013).

John R. Freudenberg
Criminal Bureau Chief
Nebraska Attorney General's Office
Lincoln, NE 68508
(402) 471-3833





STATE OF NEBRASKA

Department of Correctional Services
Dave Heineman, Governor
Michael Kenney, Director



Date: October 31st, 2013
Time: 9am
Subject: Sentence Review Committee Meeting Minutes
Present: Kyle Poppert, Kathy Blum, Jeff Beatty, Mickie Baum, George Green, Sharon Lindgren, Ginger Shurter, Nikki Peterson,
Absent: NONE
Agenda:

Current Business:

State v. Banes- Sentences: When concurrent sentences are imposed the jail time credit (JTC) is applied against EACH concurrent sentence, because the longest sentence determines the offender's actual length of time in prison.

Issue: Current calculations provide the JTC only applied to the initial sentence.

Status: Mickie Baum is currently auditing sentences to catch all changes. This list of changes is very long; currently Mickie is the only staff working on this list. As facilities records staff are able, the list will be broken down by facility.

Conclusion: We audit these sentences to our best abilities. If a judicial issue arises as a result we will handle it then.

DUI- Mandatory Minimum: State Statue language interpretation of "at least" meaning a mandatory minimum sentence.

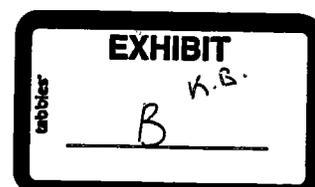
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George Shepard v. Houston- District Court Decision- Shepard a sex offender who will be required to serve his full term for failing to provide his DNA as outlined in the DNA Identification Act effective July 15, 2010. District Court ruled unconstitutional for the DCS to withhold any good time.

Issue: There are 28 other inmates who fall under this criteria.

Conclusion: Will the Attorney General appeal the decision. Future issues could arise from this case.



Hatten 78546: Wrote an Inmate interview request to the Records Administrator to have his sentenced reviewed for a Jail time Credit with the intention he deserved a lesser sentence. Mickie Baum reviewed his sentence and noticed the sentence was indeed entered into CTS incorrectly.

Status: Mickie has recalculated the sentence. She discovered the new calculation actually increased Hatten's #78546 length of stay.

Conclusion: The sentence should be calculated correctly, then give notification to the inmate and appropriate staff at WEC. Hatten #78546 is currently housed at the WEC, based off new calculations he is no longer qualified for the program. And will soon be transferred to the NSP.

State v. Castillas: The Nebraska Supreme Court affirmed the district court's decision; however the Supreme Court has made an assumption of how the DCS is calculating sentences on the maximum term when there is a mandatory minimum.

Issue: Our current practice is different than that of the court's assumption.

Status: We need to clarify exactly what the Supreme Court's intention is on this, before we as a department act.

Conclusion: We have been performing calculations our current way for years. We are now aware of this situation, we will act when we are specifically told our current way is wrong and it needs to be changed.

New business:

Revised State Statute 83-187- The DCS currently complies with sections (1) and (2) but not in compliance with section (3) the DCS shall provide a copy of the discharge to the court, county sheriff, and local police department if applicable.

Issue: There is no consistency with contact persons to be able to provide these copies.

Possible solution: Develop a template of "Inmate Release or Discharge" to include his release date, that will notify county courts and sheriffs. This notification includes Parolees and Discharges, will not to include the death of an inmate or RFP. Possibly develop an automated system that would send out weekly notifications AFTER the inmate has ACTUALLY been released from a facility. Aim to implement by December 1st, 2013. Have Legal proof the template before its implemented.

Attorney General opinion regarding State Ombudsman reviewing of inmate files. Per state statute the Ombudsman office is allowed access to inmate files. Due to confidentiality purposes copies made from inmates file should not be shared and solely used by the ombudsman.

Solution: If the ombudsman office needs a copy of any documents from an inmate's file, require them to send us an email requesting specific documents and we shall provide them. This is to protect records staff by showing a date and time the request was received and what exact documents were provided. (Notify Director Kenney prior to making this change.)

Next Meeting: TBA

**State of Nebraska
Workplace Investigation**

Statement of Nikki Peterson

On July 30, 2014, I participated in an interview with attorneys from Jackson Lewis, P.C. I was informed these attorneys were hired by the State of Nebraska to conduct a workplace investigation.

Prior to the interview, I was advised that my participation was voluntary, that Jackson Lewis, P.C. does not represent me in this matter and that any information I provided may be shared with and used by the Director of the Department of Correctional Services, Michael Kenney, and the Director of the Department of Personnel, Ruth Jones.

My workplace interview was not recorded. The statement below is a summary of the information I provided and not a complete transcript.

I had the opportunity to personally edit the statement below prior to signing.

I agree that the information below is true and correct.

I am a NDCS County Jail Case Manager. I have been in that position since June 2014. Prior to my current position, most recently I was a Records Manager I working in NDCS central office. My supervisor while working in central office was Kyle Poppert.

I have never had sentence calculation duties.

On October 16, 2013, I was asked by Kyle Poppert to coordinate the activities of the NDCS Sentencing Committee. The purpose of the committee was to monitor Supreme Court opinions and Attorney General opinions, and to be certain the Records Managers were complying with the applicable statutes. Poppert organized and ran the committee.

There was only one meeting of the Sentencing Committee. It occurred October 31, 2013. I took minutes at that meeting. I took the minutes simultaneous to those speaking in the meeting. As I recall, the legal team sat on one side of the conference table and the records team sat on the other side of the table.

I prepared an outline for the minutes before the meeting on October 31. During the meeting, I used my laptop and typed minutes into the form I created in advance. I was asked to take good minutes so they could be included on the Q drive.

I saved one draft of my minutes to a USB drive. That draft is attached as "Attachment A" to this statement. The draft is incomplete, but it is a correct reflection of what occurred. The same day, when I came back to my office after the meeting, I prepared a final draft of the minutes. My final draft is included with this statement as "Attachment B." The final draft is also an accurate reflection of what occurred in the meeting. In the final draft, I changed statements attributed to a particular individual and made them the thoughts of the collective group.

I sent the final draft of my minutes to Kyle Poppert and Mickie Baum to review. Neither Poppert nor Baum requested any changes to the minutes. It was my impression one of them intended to distribute the minutes. I did not distribute the minutes to anyone else.

I don't recall much discussion about the *Castillas* case in the Sentencing Committee meeting. I do not recall that it received more attention than any other issue we were discussing. My recollection is that the group reached a consensus not to do anything until there was a mandate directed to NDCS. The group seemed to think the decision was not a mandate to NDCS. It was my impression that the Records Division was taking direction from the Legal Division on the issue, and that Legal felt it was not necessary to change our current practice at the time. However, I was only a Records Manager I and did not have expertise in this area, so I can't be sure of the details. I do not recall that anyone was tasked to follow up. My meeting minutes are an accurate reflection of the conversation and resolution from the meeting.

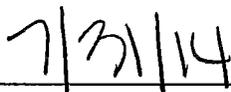
I have no additional information I would like to offer in this statement.

The statement provided above was voluntary. I had the opportunity to make changes to the statement before signing.

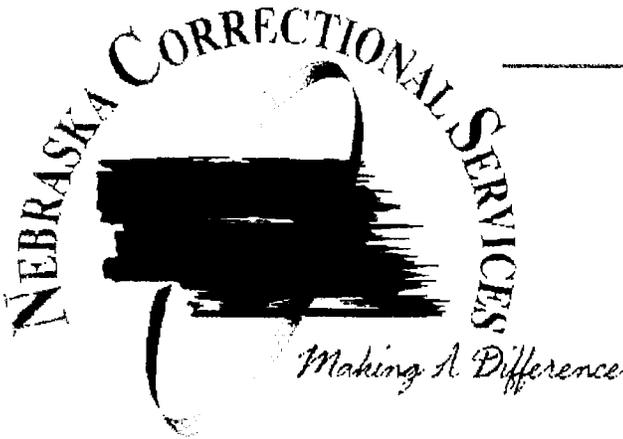
By signing this statement, I agree the contents are true and correct.



Nikki Peterson



Date



STATE OF NEBRASKA

Department of Correctional Services
Dave Heineman, Governor
Michael Kenney, Director



Date: October 31st, 2013
Time: 9am
Subject: Sentence Review Committee Meeting Minutes
Present: Kyle Poppert, Kathy Blum, Jeff Beatty, Mickie Baum, George Green, Sharon Lindgren, Ginger Shurter, Nikki Peterson,
Absent: NONE
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Issue: Current calculations provide the JTC only applied to the initial sentence.

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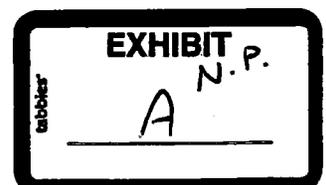
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DUI- Mandatory Minimum: State Statue language interpretation of "at least" meaning a Mandatory minimum sentence.

Status: Mickie is currently still working on NSP and OCC, all other facilities are complete.

Mickie: George Shepard District Court Decision- Sex offender needs to supply his DNA. We cannot take away his good time. Needs to register in the state of Nebraska before he can transfer. Sharon will follow up. Issue: Will AG appeal.

Mickie: Hatten 78546: Wrote a IIR to the Records Administrator is have his sentenced reviewed for Jail time Credit. The sentence was entered into CTS incorrectly. Mickie has recalculated the sentence. George: The sentence should be calculated correctly, then notify the inmate. Currently housed at the WEC, based off new calculations he is no longer qualified for WEC. And will soon be transferred to the NSP.

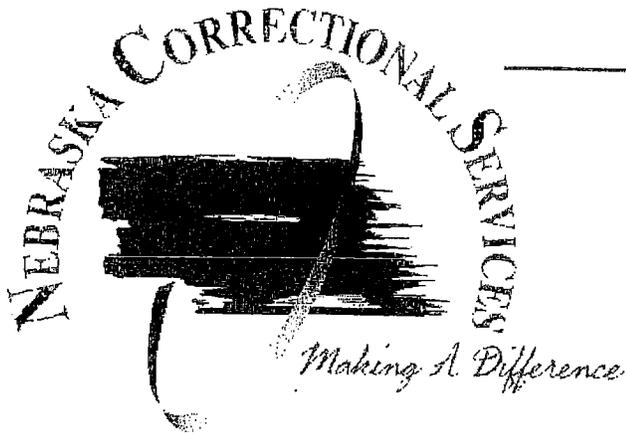


Mickie: Supreme Court On MM Calculations- State V Castilles: how to apply MM when calculating PED and TRD with good time applied. The court has made an assumption of how we are calculating sentences especially the MM. But we are doing it a different way. George: We need to clarify exactly what the SC intention is on this, before we as a department act. Sharon: We have been performing calculations our current way for years. We are now aware of this situation, we will act when we are specifically told our current way is wrong and it needs to be changed.

New business:

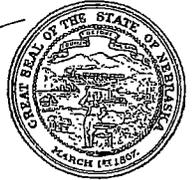
Revised State Statue 83-187- The Dept. currently complies with sections (1) and (2) but not in compliance with sec. (3) the dept. shall provide a copy of discharge to the court, county sheriff, and local police department if applicable. Problem: there is no consistency with contact persons to send emails. George: Possible solution: Develop a template of "Inmate Release or Discharge" to include his release date, to send to the county courts and sheriffs. Includes Parolees and Discharges, Not to include the death of an inmate or RFP. Possibly send out weekly notifications AFTER the inmate has ACTUALLY been released from a facility. Aim to implement by December 1st, 2013. Have Legal proof template before it is sent out.

AG opinion- Ombudsman reviewing of inmate file. Copies made from inmates filed should not be shared and strictly used by the ombudsman. George: If the ombudsman office needs a copy of any paper work, ask them to send us an email requesting specific documents. This is to provide proof of what was given, copied, sent and when it was done. (Notify Director Kenney prior to making this change.)



STATE OF NEBRASKA

Department of Correctional Services
Dave Heineman, Governor
Michael Kenney, Director



Date: October 31st, 2013
Time: 9am
Subject: Sentence Review Committee Meeting Minutes
Present: Kyle Poppert, Kathy Blum, Jeff Beatty, Mickie Baum, George Green, Sharon Lindgren, Ginger Shurter, Nikki Peterson,
Absent: NONE
Agenda:
Current Business:

State v. Banes- Sentences: When concurrent sentences are imposed the jail time credit (JTC) is applied against EACH concurrent sentence, because the longest sentence determines the offender's actual length of time in prison.

Issue: Current calculations provide the JTC only applied to the initial sentence.

Status: Mickie Baum is currently auditing sentences to catch all changes. This list of changes is very long; currently Mickie is the only staff working on this list. As facilities records staff are able, the list will be broken down by facility.

Conclusion: We audit these sentences to our best abilities. If a judicial issue arises as a result we will handle it then.

DUI- Mandatory Minimum: State Statue language interpretation of "at least" meaning a mandatory minimum sentence.

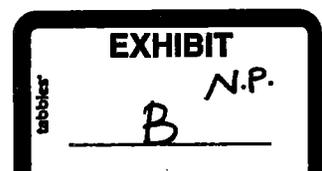
Status: Mickie Baum is currently working recalculating sentences for NSP and OCC, all other facilities are complete.

Conclusion: Again, audit to the best of our abilities. Notify the inmates of the changes. And provide them with a consistent response when questions arise.

George Shepard v. Houston- District Court Decision- Shepard a sex offender who will be required to serve his full term for failing to provide his DNA as outlined in the DNA Identification Act effective July 15, 2010. District Court ruled unconstitutional for the DCS to withhold any good time.

Issue: There are 28 other inmates who fall under this criteria.

Conclusion: Will the Attorney General appeal the decision. Future issues could arise from this case.



**State of Nebraska
Workplace Investigation**

Statement of Kyle Poppert

On July 29, 2014, I participated in an interview with attorneys from Jackson Lewis, P.C. I was informed these attorneys were hired by the State of Nebraska to conduct a workplace investigation.

Prior to the interview, I was advised that my participation was voluntary, that Jackson Lewis, P.C. does not represent me in this matter and that any information I provided may be shared with and used by the Director of the Department of Correctional Services, Michael Kenney, and the Director of the Department of Personnel, Ruth Jones.

My workplace interview was not recorded. The statement below is a summary of the information I provided and not a complete transcript.

I had the opportunity to personally edit the statement below prior to signing.

I agree that the information below is true and correct.

I started working for the State of Nebraska, Department of Correctional Services ("NDCS") in July 1994, in food service. I have held various positions with NDCS, including officer/corporal, sergeant and administrative assistant in the central office.

I became Records Administrator in 2008. I am proud of my history with NDCS and the fact that I have increased the level of responsibility in each position I have held.

The NDCS Records Department is responsible for maintaining inmate institutional files for the Parole Board. I supervise Records Managers who work in the central office. There are also Records Managers placed at each correctional facility in the NDCS system over whom I have no direct supervisory authority. I also supervise the Special Services division.

I report to Larry Wayne, the Deputy Director of Programs and Community Services.

Records Managers are responsible for performing sentence calculations on a daily basis. I assist with more complex sentence calculation issues or with any questions Records Managers may have in that area.

There is an Administrative Regulation delegating the task of sentence calculations to the Records Department. For example, NDCS has an Administrative Regulation providing an

overview of the seven different "good time laws" and how they are applied to a sentence calculation.

The Records Department also relies on Nebraska statutes, case law, Attorney General Opinions and internal memoranda in determining how to calculate sentences. For example, we have an opinion stating that, for the purpose of sentencing calculations, we treat every month as having 30 days. I would like to see these documents compiled into a written manual for Records Managers. As a result of the *Castillas* situation, I would like to create this manual with assistance from the Records Managers.

The Records Managers are generally fine with the math involved in sentence calculations. It's the application of law or the filing in blanks for incomplete orders that are more difficult and create the most risk.

When a Records Manager has a question about a sentencing order, or commitment order if there is no sentencing order, we generally first attempt to speak with the judge (or judge's bailiff) involved in issuing the sentencing order to see if we can determine the judge's intent. If that isn't helpful, we generally turn to the NDCS Legal Division for clarification.

I believe it is clear the Records Division should consult with the NDCS Legal Division when we have legal questions. We do not have a specific person at the Attorney General's office we go to with routine legal questions. It would be nice for us to have a designated person either in the NDCS Legal Division or Attorney General's office of whom we can ask sentencing questions and receive a very quick answer.

Jeannene Douglass was a Records Manager II who I supervised before she retired. Douglass was the resident expert on sentence calculations, but she could be stubborn and became easily distracted from the large volume of calculations she had to do each day. She also generally lacked a good "filter" in her communications.

On February 8, 2013, I recall receiving an email from Linda Willard in the Attorney General's Office with the *State v. Castillo*s decision attached. I also recall Douglass' first email responding to Willard, stating that NDCS was not performing mandatory release date calculations the way the Court outlined in the *Castillas* case. I took note immediately because I saw Douglass' statement that NDCS was doing something differently than was stated in a court decision.

The string of emails I recall receiving on February 8, 2013, is enclosed as "Attachment A" to this statement. I believe I spoke to Douglass in person on February 8, after her second email to Willard. Douglass provided me with several reasons why she thought NDCS should continue calculating mandatory release dates the way she always had. I told Douglass to call Willard and clarify the situation.

After Douglass spoke to Willard on the phone, she sent an email to George Green indicating that NDCS is not performing mandatory release date calculations the way the court outlines in the *Castillas* case. That email is enclosed with this statement as "Attachment B." Douglass also indicated in her email that she spoke with Willard and the two agreed NDCS should continue with our current method of calculation. I was copied on the email and I saw that Willard was copied on the email. (Attachment B). The *Castillas* decision was also attached to the email.

I believe that, on February 8, 2013, after I received this email from Douglass (Attachment B), I went and spoke with Larry Wayne in person about the *Castillas* case. Larry says that he does not recall speaking with me about this issue at that time, which is disappointing. My recollection is that I did speak with Larry and that he told me to follow up on the issue.

On February 17, 2013, I asked Douglass and Ginger Schurter to prepare a memo to George Green on our current practice in calculation of mandatory release dates, how it differs from the *Castillas* case, and whether we should stay with our current practice. A copy of my email to Douglass is included as "Attachment C" to this statement.

In my February 17, 2013 email, I stated that I believed the court was misinterpreting previous cases. I said this because it didn't seem right that we had been calculating mandatory release dates one way for so long, through various litigation, and no one questioned it. I also knew that Ron Riethmuller was good at his job and was not likely to have been irresponsible about a method of calculation.

On March 11, 2013, Douglass sent an email to George Green and me, with a 1996 memorandum from Ron Riethmuller attached. That email and memorandum are included with this report as "Attachment D." The memorandum explains the way the Records Managers were calculating mandatory release dates at the time.

Jeannene Douglass retired from NDCS in June 2013. Little happened with regard to the *Castillas* case from March 11, 2013, to October 2013.

In my interview, I was provided a copy of an email exchange between George Thompson of the Douglas County Attorney's Office and me, discussing mandatory release dates based on *State v. Castillo*. That email is included with this statement as "Attachment F." I see that I received the email on August 6, 2013. I do not recall the circumstances surrounding the email or whether I responded to George Thompson. I am unable to find an email response from me to Thompson. It is possible that I responded by phone, or that Mickie Baum responded by phone or email, but I do not recall.

In October 2013, I created the NDCS Sentencing Committee, which I intended would include myself, the Records Managers and attorneys from the Legal Division. I did this partially to be sure the Records Managers were all on the same page on issues, but also to get the Legal Division in a room with us. It often took months to get opinions from the Legal Division on

issues and I thought it would be helpful to address some of them all at once. I also wanted to reduce our decisions on issues to writing, in minutes that we could put on the Q drive.

Nikki Peterson took minutes at the Sentencing Committee meetings. I do not recall whether the minutes went to anyone for approval after she created them. The minutes were placed on the Q drive.

I recall being in the meeting of the Sentencing Committee on October 31, 2013. In the meeting, with regard to the *Castillas* case, I recall the NDCS Legal Division attorneys telling us something like, "this case is not directing Corrections to do anything different." I believe George Green gave this opinion, indicating that NDCS is not a party to a criminal appeal and the *Castillas* decision provides no direction to NDCS in particular. No one disagreed with George's opinion during the meeting.

A copy of the minutes from the October 31, 2013, Sentencing Committee meeting are included as "Attachment E" with this statement. I believe the minutes are an accurate reflection of what occurred during the meeting.

I see that the October 31 meeting minutes state, with regard to the *Castillas* case, "we need to clarify exactly what the Supreme Court's intention is on this, before we as a department act." We all dropped the ball on that issue. I do not recall that anyone was designated to follow up and contact the Nebraska Supreme Court to be sure our current practice was acceptable. We should have identified someone to follow up.

After the October 31 meeting, the Records Department did not change its method in calculation of mandatory release dates.

The next time the *Castillas* case came up was in June 2014, when a reporter from the Omaha World Herald contacted Michael Kenney.

The Records Department has now reviewed and recalculated the mandatory release date for all inmates with a mandatory minimum sentence back to 1995 to ensure all calculations are consistent with the method set forth in the *Castillas* case.

In looking back at this situation, it is clear that the Records Division needs one, written compilation of all information on sentencing calculations. We need to create a manual that is reviewed and approved, rather than relying on piecemeal information.

I also believe we dropped the ball in not seeking clarification from the Nebraska Supreme Court on how, or whether, the *Castillas* case applied to NDCS. I also believe we received bad advice from our Legal Division and I relied on that advice, along with Jeannene Douglass' indication that Linda Willard approved of us continuing our current method.

I understand that miscalculation of sentences is extremely serious. I take pride in my department and I feel bad that this issue arose in the Records Department. However, I am the only one who took any action to force a decision on this issue. I elevated this matter to my supervisor and asked for advice from the NDCS Legal Division. I needed a quicker answer and I now feel the advice I eventually received was not good.

I would appreciate any thoughts on how the Records Department should change as a result of this situation. I have ideas on how to improve our communication and intend to create a manual, but I welcome anyone else's suggestions as well.

I have no additional information I would like to offer in this statement.

The statement provided above was voluntary. I had the opportunity to make changes to the statement before signing.

By signing this statement, I agree the contents are true and correct.



Kyle Poppert



Date

Blum, Kathy

From: Douglass, Jeannene
Sent: Monday, February 11, 2013 10:39 AM
To: Baum, Mickie
Subject: FW: sentence calculation

*Jeannene Douglass
Records Manager II
Central Records Office
Nebraska Department of Corrections
PH: 402-479-5773
E-mail: jeannene.douglass@nebraska.gov*

From: Douglass, Jeannene
Sent: Friday, February 08, 2013 1:41 PM
To: Willard, Linda
Subject: RE: sentence calculation

Wouldn't the right thing to do be to continue the way we have always done it because it, too, was tried and tested. I don't know. it would be a real mess to have to go back in and recalculate everyone who has mandatory minimum sentences. What do you think??

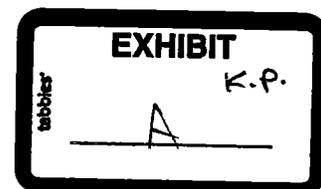
*Jeannene Douglass
Records Manager II
Central Records Office
Nebraska Department of Corrections
PH: 402-479-5773
E-mail: jeannene.douglass@nebraska.gov*

From: Willard, Linda
Sent: Friday, February 08, 2013 1:19 PM
To: Douglass, Jeannene
Subject: RE: sentence calculation

Note that the Supreme Court said the Dist. Court was wrong in how they calculated. If you are doing it differently than what the Supreme Court said is the "correct" way to calculate, do you decide to stay with the "right" way or go with what the Supreme Court said is the correct way?

From: Douglass, Jeannene
Sent: Friday, February 08, 2013 11:48 AM
To: Willard, Linda
Cc: Poppert, Kyle
Subject: RE: sentence calculation

The statements in this regarding the calculation of parole eligibility are correct. The manner presented regarding the discharge date calculation is not correct.



Parole eligibility has always been calculated by adding the mandatory minimum required by law to the date the sentence begins. IF the minimum sentence is greater than the mandatory minimum term, one-half of the remainder is added to the mandatory minimum term to provide the total minimum sentence to be served. Any jail credit is credited to the minimum term.

However, Mr. Castillas will not serve 52 ½ years for discharge; the inmate must serve either one-half of the maximum term less jail credit OR the Mandatory Minimum term, whichever is longer, before being discharged from the sentence. The discharge date is not calculated in the same manner as the parole eligibility date.

In Mr. Castillas' case, he is serving a 30-year minimum sentence, 25 years of which are mandatory and not eligible for good time application. He will become eligible in 27 ½ years (25 years plus ½ of the remaining 5 years) less 379 days jail credit.

Mr. Castillas will discharge, at the very earliest, after serving one-half of the maximum 80-year sentence (40 years less 379 days jail credit). The 25-year mandatory minimum is less than the 40 years he will serve to be discharged.

*Jeannene Douglass
Records Manager II
Central Records Office
Nebraska Department of Corrections
PH: 402-479-5773
E-mail: jeannene.douglass@nebraska.gov*

From: Willard, Linda
Sent: Friday, February 08, 2013 9:41 AM
To: Poppert, Kyle; Douglass, Jeannene
Subject: sentence calculation

The attached case came down from the Nebr. Supreme Court today. Starting at the bottom of p. 188 they discuss sentence calculation. It is my understanding that this is how you currently do the calculation. Others in the office thought you might be doing it differently. So I am sending this to you so you can make sure you are doing the calculation in accordance with the Supreme Court's direction.

Poppert, Kyle

From: Douglass, Jeannene
Sent: Friday, February 08, 2013 2:09 PM
To: Green, George
Cc: Willard, Linda; Poppert, Kyle
Subject: David G. Castillas 74035



David Castillas,
74035.pdf

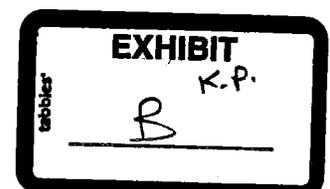
I have been in conversation with Linda Willard regarding the attached Supreme Court decision regarding the calculations of mandatory minimum sentences. While I agree with, and we are currently calculating the mandatory minimum terms in the manner expressed in this decision, we do not calculate the discharge date in the manner described in this decision.

Linda asked me if we would continue to calculate the sentence in the right way or go with what the Supreme Court says. I said, and she supported me, that we would do what is in the inmate's best interest, that being, continue calculating the sentences the way we have always done it. He will serve one-half of the maximum sentence for discharge, as long as the mandatory minimum term required by law is served. If we would calculate this sentence in the manner according to the Supreme Court's decision, Mr. Castillas would serve an additional 12 ½ years (40 years for discharge the way we calculate the sentence; 52 ½ years following the Supreme Court's model). She agreed with me, and suggested that I share this with you, Mr. Green, for your input and expertise in this matter. She also said the inmate, obviously, would not complain since he will serve less time by our calculations. (It would also serve the Director's desires, as well, to not increase our population any more than we must.)

I am available if you have any questions concerning this issue.

Thank you.

Jeannene Douglass
Records Manager II
Central Records Office
Nebraska Department of Corrections
PH: 402-479-5773
E-mail: jeannene.douglass@nebraska.gov



From: Douglass, Jeannene
Sent: Tuesday, February 19, 2013 8:39 AM
To: Baum, Mickie
Subject: FW: Castillas #74035

Thought you might get a kick out of this e-mail from KP. Specially the last sentence~!!!

*Jeannene Douglass
Records Manager II
Central Records Office
Nebraska Department of Corrections
PH: 402-479-5773
E-mail: jeannene.douglass@nebraska.gov*

From: Poppert, Kyle
Sent: Sunday, February 17, 2013 11:24 AM
To: Douglass, Jeannene; Shurter, Ginger
Subject: Castillas #74035

Jeannene, Ginger
Regarding the Castillas #74035 case you have been in discussion with Linda Willard.

I need you to work with Ginger and draft a response to George Green for my review on Friday.

I would like you to explain our current practice, the expected practice under the ruling of the Supreme Court and why you believe our current practice is the proper course.

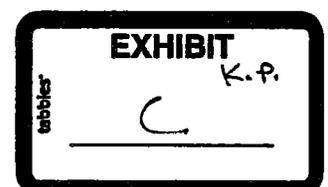
NDCS and the court are relying on the same case history to arrive at our decisions. I think the court is misinterpreting the previous cases. Anyway we need to be able to explain this to George.

I do want to caution folks, our current efforts to reduce our inmate population has nothing to do with how we apply good time laws. The law is the law and we will act accordingly.
Thanks,

Kyle

Kyle J. Poppert
Classification and Inmate Records Administrator
Nebraska Department of Correctional Services
Programs & Community Services Division
Phone: (402) 479-5750
Cellular (402) 326-2423
Fax: (402) 742-2349
Kyle.Poppert@nebraska.gov

Change is inevitable, growth is optional.



From: Douglass, Jeannene
Sent: Monday, March 11, 2013 2:28 PM
To: Poppert, Kyle
Cc: Green, George
Subject: Mandatory Minimum sentence calculation procedure

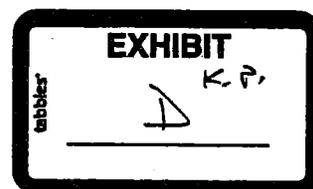


mandatory
minimum mem...

You had asked me for something in writing explaining how we calculate mandatory minimum sentences. I am attaching a memorandum dated 9-18-1996 from Ron Riethmuller, then Records Administrator, regarding our procedures in calculating mandatory minimum sentences. This is the procedure we have been using and has been supported by the Attorney General's Office as well as court opinions.

I hope this information is useful to you in your quest.

Jeannene Douglass
Records Manager II
Central Records Office
Nebraska Department of Corrections
PH: 402-479-5773
E-mail: jeannene.douglass@nebraska.gov



Jal

STATE OF NEBRASKA

DEPARTMENT OF CORRECTIONAL SERVICES

Harold W. Clarke

Director

MEMORANDUM



E. Benjamin Nelson
Governor

DATE: September 18, 1996

TO: Records Staff

FROM: Ron Riethmuller, Records Administrator *RR*

RE: Computing Parole Eligibility and Discharge Dates on Inmates Serving Mandatory Minimums

To comply with the recent Attorney General's Opinion concerning mandatory minimum sentences, the following procedures shall be used to insure that mandatory minimum terms are served.

We will proceed with the procedure as was discussed at the July 12, 1996 records meeting regarding parole eligibility computation. The parole eligibility date is computed based on the inmate serving the entire mandatory minimum term provided by statute plus one-half (1/2) of the balance of any court imposed minimum term beyond the mandatory minimum. For example, a total sentence of 8 to 14 years for a 1DF (mandatory minimum of 3 years) is computed as follows:

Parole Eligibility: Inmate must serve the entire three (3) years PLUS one-half (1/2) of the remaining five (5) years, a total of 5 1/2 years for parole eligibility. This procedure, which complies with the language in LB 371, prohibits awarding of good time on mandatory minimums.

The following procedure will insure that no inmate is discharged prior to serving the mandatory minimum.

1. The discharge date on the maximum term will be compared with the mandatory minimum provided by statute.
2. If the discharge date is prior to the inmate serving the entire statutory mandatory minimum, the discharge date shall be changed to reflect the later date.

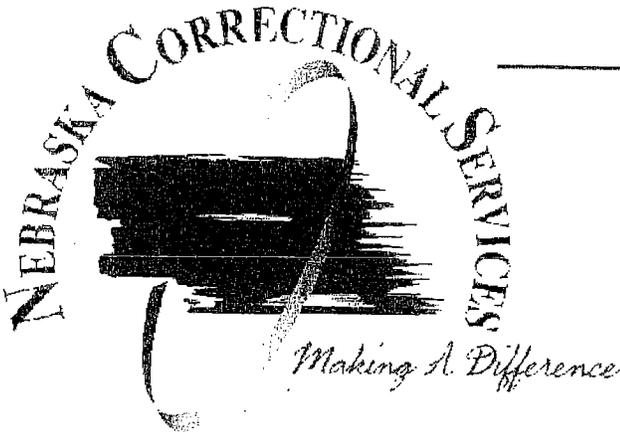
Example: If an inmate is sentenced to a term of 3 to 5 years for a 1DF under LB 816, both the parole eligibility and discharge dates would be 3 years.

3. If the discharge date on the maximum term is longer than the mandatory minimum, no changes will be made on the discharge date.

I have reviewed the mandatory minimums on all active inmates; this procedure will extend the discharge dates of nine inmates. A list of the affected inmates is attached.

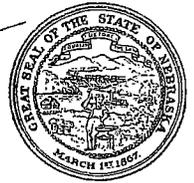
xc: Harold W. Clarke
Larry A. Tewes
George D. Green
Laurie Smith Camp
Manuel S. Gallardo





STATE OF NEBRASKA

Department of Correctional Services
Dave Heineman, Governor
Michael Kenney, Director



Date: October 31st, 2013
Time: 9am
Subject: Sentence Review Committee Meeting Minutes
Present: Kyle Poppert, Kathy Blum, Jeff Beatty, Mickie Baum, George Green, Sharon Lindgren, Ginger Shurter, Nikki Peterson,
Absent: NONE
Agenda:

Current Business:

State v. Banes- Sentences: When concurrent sentences are imposed the jail time credit (JTC) is applied against EACH concurrent sentence, because the longest sentence determines the offender's actual length of time in prison.

Issue: Current calculations provide the JTC only applied to the initial sentence.

Status: Mickie Baum is currently auditing sentences to catch all changes. This list of changes is very long; currently Mickie is the only staff working on this list. As facilities records staff are able, the list will be broken down by facility.

Conclusion: We audit these sentences to our best abilities. If a judicial issue arises as a result we will handle it then.

DUI- Mandatory Minimum: State Statue language interpretation of "at least" meaning a mandatory minimum sentence.

Status: Mickie Baum is currently working recalculating sentences for NSP and OCC, all other facilities are complete.

Conclusion: Again, audit to the best of our abilities. Notify the inmates of the changes. And provide them with a consistent response when questions arise.

George Shepard v. Houston- District Court Decision- Shepard a sex offender who will be required to serve his full term for failing to provide his DNA as outlined in the DNA Identification Act effective July 15, 2010. District Court ruled unconstitutional for the DCS to withhold any good time.

Issue: There are 28 other inmates who fall under this criteria.

Conclusion: Will the Attorney General appeal the decision. Future issues could arise from this case.

EXHIBIT

tabbler

E K.P.

Hatten 78546: Wrote an Inmate interview request to the Records Administrator to have his sentenced reviewed for a Jail time Credit with the intention he deserved a lesser sentence. Mickie Baum reviewed his sentence and noticed the sentence was indeed entered into CTS incorrectly.

Status: Mickie has recalculated the sentence. She discovered the new calculation actually increased Hatten's #78546 length of stay.

Conclusion: The sentence should be calculated correctly, then give notification to the inmate and appropriate staff at WEC. Hatten #78546 is currently housed at the WEC, based off new calculations he is no longer qualified for the program. And will soon be transferred to the NSP.

State v. Castillas: The Nebraska Supreme Court affirmed the district court's decision; however the Supreme Court has made an assumption of how the DCS is calculating sentences on the maximum term when there is a mandatory minimum.

Issue: Our current practice is different than that of the court's assumption.

Status: We need to clarify exactly what the Supreme Court's intention is on this, before we as a department act.

Conclusion: We have been performing calculations our current way for years. We are now aware of this situation, we will act when we are specifically told our current way is wrong and it needs to be changed.

New business:

Revised State Statue 83-187- The DCS currently complies with sections (1) and (2) but not in compliance with section (3) the DCS shall provide a copy of the discharge to the court, county sheriff, and local police department if applicable.

Issue: There is no consistency with contact persons to be able to provide these copies.

Possible solution: Develop a template of "Inmate Release or Discharge" to include his release date, that will notify county courts and sheriffs. This notification includes Parolees and Discharges, will not to include the death of an inmate or RFP. Possibly develop an automated system that would send out weekly notifications AFTER the inmate has ACTUALLY been released from a facility. Aim to implement by December 1st, 2013. Have Legal proof the template before its implemented.

Attorney General opinion regarding State Ombudsman reviewing of inmate files. Per state statue the Ombudsman office is allowed access to inmate files. Due to confidentiality purposes copies made from inmates file should not be shared and solely used by the ombudsman.

Solution: If the ombudsman office needs a copy of any documents from an inmate's file, require them to send us an email requesting specific documents and we shall provide them. This is to protect records staff by showing a date and time the request was received and what exact documents were provided. (Notify Director Kenney prior to making this change.)

Next Meeting: TBA

From: Thompson, George A. (DC Atty Criminal) <George.Thompson@douglascounty-ne.gov>
Sent: Tuesday, August 06, 2013 1:59 PM
To: Poppert, Kyle
Subject: RE: Sebesta #77046

Kyle,

Sorry for getting back to you so late. I was inquiring into the sentence based on *State v. Castillas*. As you know, the third count (possession of a deadly weapon by a prohibited party) is a ID Felony requiring a mandatory minimum. The Court in *Castillas* held that mandatory minimum sentences cannot concurrently.

In addition, I was looking at the mandatory discharge date. Per *Castillas* one computes the same by subtracting the mandatory minimum sentence from the maximum sentence, halving the difference, and adding that difference to the mandatory minimum. Assume that count three does not run consecutive to the others two – I put the mandatory release date at 12 ½ years. That would be even greater if count three runs consecutive.

With all that said, I was also told there would be no math in this job so I could be way off. The reason for my inquiry was that I had appealed the sentence on the basis of leniency. *Castillas* was entered after I had submitted my brief. Can you let me know if I am out of bounds on my calculations or interpretation of *Castillas*?

Thanks,

George

From: Poppert, Kyle [<mailto:Kyle.Poppert@nebraska.gov>]
Sent: Wednesday, July 10, 2013 4:32 PM
To: Thompson, George A. (DC Atty Criminal)
Subject: Sebesta #77046

Thank you for your call regarding Mr. Sebesta #77046.

My records indicate he was sentenced to a term of:

6 to 10 years for manslaughter

A consecutive sentence of 6 to 10 years for use of a deadly weapon to commit a felony

And a concurrent term of 3 to 10 years for possession of a deadly weapon by a prohibited person.

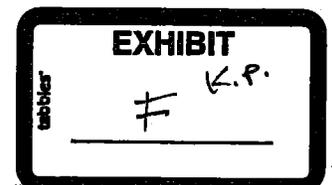
The last two sentences have a combined mandatory minimum of 8 years.

I show his parole eligibility date of 8-10-2020 and a tentative release date of 2-10-2022.

If I can clarify any of this, or if you have additional questions, please don't hesitate to contact me.

Kyle

Kyle J. Poppert, Administrator
Nebraska Department of Correctional Services
Classification, Inmate Records, Warrants & Extraditions
Phone: (402) 479-5750
Cell: (402) 326-2423
Fax: (402) 742-2349
Kyle.Poppert@nebraska.gov



Hatten 78546: Wrote an Inmate interview request to the Records Administrator to have his sentenced reviewed for a Jail time Credit with the intention he deserved a lesser sentence. Mickie Baum reviewed his sentence and noticed the sentence was indeed entered into CTS incorrectly.

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Issue: Our current practice is different than that of the court's assumption.

Status: We need to clarify exactly what the Supreme Court's intention is on this, before we as a department act.

Conclusion: We have been performing calculations our current way for years. We are now aware of this situation, we will act when we are specifically told our current way is wrong and it needs to be changed.

New business:

Revised State Statute 83-187- The DCS currently complies with sections (1) and (2) but not in compliance with section (3) the DCS shall provide a copy of the discharge to the court, county sheriff, and local police department if applicable.

Issue: There is no consistency with contact persons to be able to provide these copies.

Possible solution: Develop a template of "Inmate Release or Discharge" to include his release date, that will notify county courts and sheriffs. This notification includes Parolees and Discharges, will not to include the death of an inmate or RFP. Possibly develop an automated system that would send out weekly notifications AFTER the inmate has ACTUALLY been released from a facility. Aim to implement by December 1st, 2013. Have Legal proof the template before its implemented.

Attorney General opinion regarding State Ombudsman reviewing of inmate files. Per state statute the Ombudsman office is allowed access to inmate files. Due to confidentiality purposes copies made from inmates file should not be shared and solely used by the ombudsman.

Solution: If the ombudsman office needs a copy of any documents from an inmate's file, require them to send us an email requesting specific documents and we shall provide them. This is to protect records staff by showing a date and time the request was received and what exact documents were provided. (Notify Director Kenney prior to making this change.)

Next Meeting: TBA

**State of Nebraska
Workplace Investigation**

Statement of Larry Wayne

On July 30, 2014, I participated in an interview with attorneys from Jackson Lewis, P.C. I was informed these attorneys were hired by the State of Nebraska to conduct a workplace investigation.

Prior to the interview, I was advised that my participation was voluntary, that Jackson Lewis, P.C. does not represent me in this matter and that any information I provided may be shared with and used by the Director of the Department of Correctional Services, Michael Kenney, and the Director of the Department of Personnel, Ruth Jones.

My workplace interview was not recorded. The statement below is a summary of the information I provided and not a complete transcript.

I had the opportunity to personally edit the statement below prior to signing.

I agree that the information below is true and correct.

I am the Nebraska Department of Correctional Services ("NDCS"), Deputy Director of Programs and Community Services. Among others, my duties include oversight of the Records Division, Parole, Programs, Work Ethic Camp, Reentry Program, Community Corrections Center and CTS.

I have worked for NDCS for 39 years. I started in 1975 as a rehabilitation counselor. I have held my current position since 2003.

I am Kyle Poppert's direct supervisor. Poppert is the NDCS Records Administrator. We have worked together since 2005 and he is an outstanding employee. A copy of the organizational chart for the NDCS Records Division is attached to this statement as "Attachment A."

Sentencing calculations are tasked to the Records Division in an administrative regulation. That administrative regulation is attached to this statement as "Attachment B."

Beginning in the 1980s, Ron Riethmuller was the NDCS Records Administrator and was an expert on sentencing calculations. Riethmuller retired a few years ago and Poppert transitioned into his position.

I am not involved in sentencing calculations issues on a regular basis. If Poppert has a problem he is unable to resolve, he comes to me for assistance. He may also come to me if he needs a decision from an administrator or executive. Otherwise, I expect that he will resolve things independently in the department he oversees. Prior to the issuance of the *State v. Castillas* case, we rarely had problems with sentence calculations.

If a Records Manager has a legal question, I expect that they would speak with Poppert first. If Poppert did not know the answer, I expect he would go to the NDCS Legal Division. I do not expect that Poppert or our Records Managers would interact directly with the Attorney General's Office on sentencing calculation issues. I believe the NDCS Legal Division should be the liaison between NDCS and the Attorney General on legal issues.

The first time the *State v. Castillas* decision came to my attention was on Monday, June 16, 2014. I returned from vacation and Director Kenney indicated the Omaha World Herald found a problem with our sentencing calculations. On that day, Director Kenney showed me a string of February 2013 emails between Jeannene Douglass, Kyle Poppert, George Green and Linda Willard. This was the first time I had seen the emails.

I was disappointed and surprised when I read the emails. I wish that someone would have come to me in February 2013. I have worked with Linda Willard many times. If I would have known about the *Castillas* case, I could have brought the issue to a head quickly. I would have gotten all of the parties together to make a deliberate decision.

I know that Poppert says he came to me about this issue in February 2013. I do not believe this is true. If Poppert would have notified me that NDCS was engaging in sentence calculations that were different from what the Nebraska Supreme Court required, it is not in my nature to ignore it. This would have been a big deal and bells would have gone off for me. I am not a micromanager, but I am aggressive in defending the interests of NDCS. I also question why Poppert would not have put something this important in writing to me. I have nothing to indicate he did so.

I do recall Poppert coming to me regarding an issue about mandatory minimum sentences and DUI charges, but not about the *Castillas* case.

I do not believe I would have received notice of the *Castillas* case and just allowed Poppert to walk away without a resolution. It is concerning to me that Poppert knew that NDCS was calculating mandatory release dates differently than the Nebraska Supreme Court indicated in *Castillas* and that he did not push for a clear resolution. I think this should have caused some dissonance for him.

I am now aware that Poppert created a Sentencing Committee in October 2013. I may have been aware that Poppert was creating that committee at the time and it is possible that he and I discussed the committee in general terms, but I do not recall specific discussions about it. I am

now aware that Poppert copied me on an email to the Records Managers and Legal Division regarding creation of the Sentencing Committee and that I said, "good job," or something similar. I did not attend Sentencing Committee meetings. I did not receive or review the minutes of the Sentencing Committee meetings and Poppert did not report to me about the meetings.

On June 16, 2014, after Director Kenney spoke with me about the *Castillas* case, I spoke with Poppert in person. He and I disagreed at that time about whether he brought this issue to my attention. Poppert also said something like, "I guess I got some bad advice from our attorneys." Poppert also indicated he received advice from the Attorney General on the issue.

One to two weeks later, Director Kenney asked me to check with George Green about what happened with the *Castillas* case. I recall Green's initial response was that, at the time, he felt *Castillas* had no precedent setting impact, that the decision applied only to Mr. *Castillas*. I also recall that George Green said in retrospect this was probably the wrong way to look at the *Castillas* case.

During that conversation with George Green, I asked if he spoke with Bob Houson about the *Castillas* case and he indicated he had not. Green and I also discussed things NDCS could have done differently or better. I do not know whether Green gave legal advice on *Castillas* that was incorrect or whether he did not give an opinion at all. I was not involved in those discussions.

I never spoke with Bob Houston about the *Castillas* case.

I think several people made mistakes in how they responded to the *Castillas* case. However, I want to be clear that most of the employees involved have been with NDCS for their entire careers and they are good employees.

I believe that Linda Willard should have elevated her contact to an administrative level, or followed up with our Legal Division, if she did not agree with Jeannene Douglass' email indicating NDCS was not calculating sentences in accordance with the *Castillas* decision. She was copied on Douglass' email and did not follow up on the issue. If she thought Poppert and Green were not reaching a proper resolution on the issue, she should have elevated the issue or followed up.

Jeannene Douglass should have respected the decision of the Nebraska Supreme Court. She was with NDCS for 44 years and should have known better than to disregard the *Castillas* decision.

Kyle Poppert should not have listened to Jeannene Douglass in her justification for not following the calculations in the *Castillas* case. He should have continued to push for a resolution and, if he was uncomfortable with the legal advice he received, he should have come to me or elevated the issue.

George Green should have insisted on closure and consensus on how to apply the *Castillas* case.

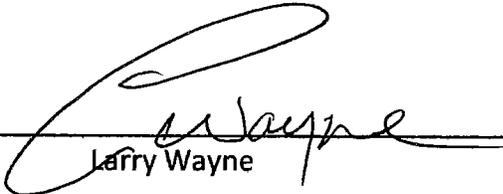
I do not think that NDCS employees had knowledge this decision required them to act differently and just refused to do so. I also do not see any indication NDCS employees considered the effect on the prison population when they were evaluating what to do with the *Castillas* case.

Director Houston did have a goal to discharge prisoners as soon as they were ready to reenter the community, particularly when prisoners were low risk and just needed treatment or services, and this goal did help reduce the prison population. However, this had nothing to do with the *Castillas* case or the way NDCS handled that case. Director Houston certainly would not have advocated for, or even considered, applying sentence calculations in a way that reduced the prison population. I know that Jeannene Douglass made a statement that not changing NDCS calculations of mandatory release dates would help reduce the prison population. Douglass had clearly taken a basic goal of NDCS and extended it in her mind way outside of what was appropriate or intended.

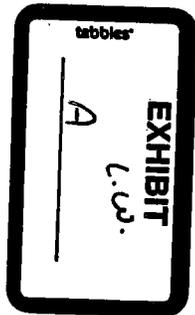
I have no additional information I would like to offer in this statement.

The statement provided above was voluntary. I had the opportunity to make changes to the statement before signing.

By signing this statement, I agree the contents are true and correct.


Larry Wayne

7/3/14
Date



- Administrator
Kyle J. Poppert
- Central Records Division
- Warrants & Extraditions Division
- Classification Administrator
- Administrator Re-entry Furlough Program
- County Jail Initiative
- Administrator Administrative Segregation Review Board -- Layne
- NDCS VINE Administrator -- Micki Silva

- Records Manager II**
Ginger Shurter
- Manage discharged records office
 - Review commitment orders and sentence calculations
 - Microfilming and retention
 - Primary resource for facilities. Training, coverage for when a facility Rec Mgr is out of the office
 - Audit of facility records office as part of ACA internal audit process
 - Sex offender notifications
 - Victim witness notifications

- Staff Assistant I**
Barb Bossung
- Discharge file retention
 - Pen packets
 - 120 & 122 Report reviews- Takako
 - Process class studies
 - Filing for CRO files
 - Print file fronts assemble CRO file

- Records Manager I**
Takako Johnson
- Manage records office for current inmates
 - Responsible for records processes in support of the Parole Board
 - Process CTS functions
 - Initial Board review dates
 - Print and digitally store all PSI
 - Process CCC-L time calculations -From Kyle
 - LB 191 reviews from Mickie

- Admin Secretary**
Brenda Stuefer
- Distribution
 - Court Ordered Transports
 - Process detainees
 - Cancellations
 - Filing and distribution
 - NCIC hit confirmations

- Records Manager II**
Mickie Baum
- Manage Special Services Office
 - APA & SS records functions
 - Process parole discharge certificates -Brenda
 - Update & distribute time sheets -Takako
 - 2nd party teletype verifications
 - Parole Detainers
 - LB 191 reviews-Takako
 - APA loss good time
 - AR reviews
 - CTS entries for County jails-Mickie
 - Review parole NCIC notify APA SOR & Prot orders -Mickie

- Warrants & Extradition Operations**
- Governor's Warrants
 - Interstate Agreement on Detainers
 - Teletype Operations
 - Parole Abscond Files
 - Escape Files
 - Parole Violators
 - Inmate Transportation
 - Judicial Extradition Hearings
 - Prosecution Letters
 - Court Ordered Transportation
 - Disposition of Untried Charges
 - Law Enforcement Notifications

- Staff Assistant II**
Hannah Yates
- Teletype Operations
 - Process detainees
 - Parole Absconders
 - Escape files
 - Governor's Warrants
 - I.A. Detainers
 - NCIC NCJIS for parole

- Staff Assistant II**
Chara Heese
- Teletype Operations
 - NCIC for background checks
 - NCJIS for background checks
 - Work Release RFP applications

- Warrant & Extradition Officer**
OPEN
- Inmate Transports
 - Serve Detainers
 - Monthly External Notifications
 - Judicial extradition waiver hearings

- Warrant & Extradition Officer**
Jason Phelps
- Inmate Correspondence & Research
 - Inmate Transports
 - Serve Detainers

- Warrant & Extradition Officer**
Craig Gilsdorf
- Logistics & scheduling
 - Inmate Transports
 - Serve Detainers
 - Prosecution Letters

	ADMINISTRATIVE REGULATION Department of Correctional Services State of Nebraska	NUMBER 104.01	Page 1 of 14
		INMATE RECORDS MANAGEMENT	

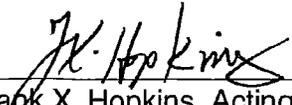
NOT TO BE DISSEMINATED TO INMATES

EFFECTIVE: March 1, 1980
 REVIEWED: July 30, 2004
 REVISED: September 29, 2006
 REVISED: March 15, 2006
 REVISED: November 8, 2007
 REVISED: September 26, 2008
 REVISED: September 24, 2009
 REVISED: September 30, 2010
 REVISED: September 27, 2011
 REVISED: September 21, 2012
 REVISED: October 25, 2013

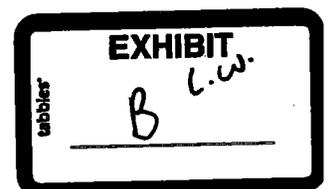
SUMMARY of REVISION/REVIEW

Minor revisions include: in Procedure II changing NiCAMS to 'Department's Case Management Database'; the correction of an AR title in Procedure II.C.; the addition of N before DCS where applicable throughout; reformatting where required; and, minor changes in the Reference Section.

APPROVED:



 Frank X. Hopkins, Acting Director
 Nebraska Department of Correctional Services



	ADMINISTRATIVE REGULATION Department of Correctional Services State of Nebraska	NUMBER 104.01	Page 2 of 14
		INMATE RECORDS MANAGEMENT	

PURPOSE

This Administrative Regulation provides a policy statement outlining guidelines for managing inmate records. This includes all manual and computerized systems.

GENERAL

This administrative regulation shall apply to all facilities within the jurisdiction of the Nebraska Department of Correctional Services (NDCS). Each facility shall have an inmate records office appropriately staffed. Each records office shall adopt procedures consistent with this regulation. In addition, this regulation shall also apply to the Central Records Office. The Institutional "File" shall mean all NDCS records in any form including written records and information stored in electronic form.

PROCEDURE

I. WRITTEN RECORDS

A. Facility File

1. File Establishment

A record of each offender committed to the custody of NDCS shall be established upon receipt of the inmate and shall be maintained throughout the inmate's incarceration.

2. Privacy

Institutional/program policy and procedure shall designate appropriate employees or classes of employees who shall be permitted routine access to inmate records. Facility/Program administrators or their designee must give authorization to access files to other employees of the NDCS who are not normally authorized to do so.

3. Content and Format

An inmate's individual file as described in §83-178 of the Nebraska Statutes shall contain the admission summary, pre-sentence report (if available), the classification report, official records of conviction and commitment, disciplinary reports, and accurate computation and recording of good time, updated tentative release date, parole plans and records including contact notes, mental health records, treatment files, medical records, and other pertinent data. With the exception of the mental health records noted below, the data described above need not be contained in the inmate's individual file in order to be considered an integral part of the institutional file as defined in §83-178.

Mental health records, specifically the inmate's initial psychological evaluation/assessment (which is already included in the classification report) and all subsequent updates of that initial material shall be contained in the inmate's institutional file.

	ADMINISTRATIVE REGULATION Department of Correctional Services State of Nebraska	NUMBER 104.01	Page 3 of 14
		INMATE RECORDS MANAGEMENT	

A standardized format for all inmate files has been developed. The format will be followed by all records offices. The attached order of filing sheet will be utilized at all NDCS institutional records offices. The order of filing will be reviewed annually with this AR. Employees authorized to have access to inmate files should be familiar with format and follow it accordingly.

In addition, files maintained by community corrections facilities will also contain the following information:

- initial intake information
- case information from referral source, if available
- case history/social history
- medical record, when available
- individual plan or program
- signed release of information forms
- evaluation and progress reports
- current employment data
- program rules and disciplinary policy, signed by offender
- documented legal authority to accept offender
- grievance and disciplinary record
- referrals to other agencies
- final discharge report

4. Review

Inmate records are reviewed at a minimum annually during the inmate's classification/personalized plan review. When files are reviewed, a notation will be made of the file front at least annually. The Inmate Management File Audit Form will be used to document custody reviews, personalized plan reviews and contact notes are up to date and initiates the purging of documents in the miscellaneous section. Documents in the miscellaneous section of the Inmate Management File will be purged and destroyed 5 years after the document's creation. In addition, files are also reviewed whenever the file is accessed by authorized staff. These reviews insure information contained in the file is current and accurate. Any discrepancies should be brought to the attention of the Facility Records Manager for appropriate action. The Records Administrator will assign a CRO records manager to each records center to act as a liaison and resource between the CRO and the records center. The CRO records manager will be responsible for conducting an audit of the records office during the institution's internal ACA audit. The audit will review performance measures including accuracy of time calculations, commitment orders, victim witness notifications, sex offender registrations and office procedures. On the first working day of July, each facility records office will verify the files in its custody and report any discrepancies to the Records Administrator.

5. Security

Inmate records will be marked "confidential" and kept in a secure area. The institution/program head will institute procedures to protect the records from unauthorized access, theft, loss or destruction.

	ADMINISTRATIVE REGULATION Department of Correctional Services State of Nebraska	NUMBER 104.01	Page 4 of 14
		INMATE RECORDS MANAGEMENT	

6. Utilization

Information contained in inmate records and/or information from automated records systems shall be the basis of the various decision-making activities regarding the inmates.

7. Release of Information

a. Confidential information: Contents of inmate files are confidential per Neb. Rev. Stat. §83-178. This statute prohibits inmate access to these records and does not allow public inspection except by court order for good cause. However, information in an inmate's file which is available to the inmate from other sources (such as records of disciplinary actions) may be released after authorization by the inmate (including parolees and discharged inmates) through the signing of a Release of Information consent form that details:

- 1) The nature of the information released;
- 2) The requesting party;
- 3) The releasing party; and
- 4) The reason the information is needed.

b. Public Information: There is some information contained in inmate files that is considered public information. Matters of public record may be released to the public upon request. Matters of public record include the following:

- 1) Inmate's name and institutional number;
- 2) Inmate's age and date of birth;
- 3) Facility location;
- 4) Committing offense(s);
- 5) Length of sentence;
- 6) County of commitment;
- 7) Parole eligibility and discharge dates;
- 8) Parole hearing date.
- 9) Mug/Dress Out photographs.

c. Independent Researchers: Researchers retained on a contractual basis with the NDCS may have access to inmate files. These researchers shall be familiar with all institution/program procedures concerning the confidentiality of information and shall abide by them.

	ADMINISTRATIVE REGULATION Department of Correctional Services State of Nebraska	NUMBER 104.01	Page 5 of 14
		INMATE RECORDS MANAGEMENT	

Consult Administrative Regulation 103.01, *Research* for further information. The Records Administrator will be notified prior to the start of any research project.

- d. Sharing Information: NDCS may share records from inmate files with the Attorney General's office, the Governor's office, other correctional facilities, probation departments and other governmental entities having a legitimate interest in an inmate's files.

8. Records Retention

Inmate files shall be maintained by the appropriate records center from the date of admission through the date discharged from the NDCS. Files of discharged inmates are sent to the Central Records Office for storage. Files of paroled female inmates are to be transferred to the Nebraska Correctional Center for Women (NCCW) records office within 30 days of the status change. Files of paroled male inmates will be transferred to the Central Records Office within 30 days of the status change. Files retained in the Central Records Office are retained or destroyed per the NDCS records retention policy.

9. Transfer of Records

When an inmate is transferred from one institution to another within the NDCS, his/her updated institutional file shall be simultaneously transferred, or if the records are not immediately available, within 72 hours. The file will be current, including the completion all matters such as notifications. DNA testing and/or additional sentences will be processed. The file front will accurately reflect an inmate's status and will be completed prior to his or her transfer. The file will be audited and discrepancies corrected before an inmate is transferred. This policy applies to the transfer of medical records, unit file and appropriate updates to any automated system. Mental Health records, with current progress report or treatment status shall be simultaneously transferred when mental health programming is available at the receiving institution.

B. Central Office File

Nebraska Revised Statute 83-1,100 requires the NDCS to maintain all records and files associated with the Board of Parole. To comply with this requirement, the Central Records personnel shall also establish a file on each committed inmate. This file will be used by the Board of Parole and their staff to assist them in carrying out their duties. In addition, the file will be shared with NDCS staff at Central Office to assist in routine decision-making activities. This file contains much of the same information as described in Procedure I.A.3. In addition, this file also contains information generated by the Board of Parole and their staff that is normally not contained in the institution file. The applicable paragraphs under Procedure I.A. shall also apply to these files. The files are reviewed by Parole Board staff at the inmate reviews and hearings. In addition, files are also reviewed whenever the file is accessed by authorized staff. These reviews insure information contained in the file is current and accurate. Any discrepancies should be brought to the attention of the Central Records Office Manager for appropriate action.

	ADMINISTRATIVE REGULATION Department of Correctional Services State of Nebraska	NUMBER 104.01	Page 6 of 14
		INMATE RECORDS MANAGEMENT	

C. Inmate Management File

The institutional treatment file will be renamed the Inmate Management File which is more in keeping with its function. New six section file folders will be ordered as needed. Until then dividers can be used to separate the new sections. Contact notes should be entered into the existing Department Case Management Database application. The sections of the Inmate Management File are as follows:

Section 1. Classification Study, Initial Classification forms, Reclassification Forms and Classification Appeals.

Section 2. Inmate Management File Audit Form.

Section 3. Personalized Plans and programming information.

Section 4. Parole Board information and letters.

Section 5. Miscellaneous (interview requests, correspondence and other forms generated by the institution or the inmate).

Section 6. Working documents (cell assignment sheets, rules and regulation agreements, work reports).

D. Central Records Administration

The Records Administrator will share supervision of institutional records managers with facility staff. Leave will continue to be approved by the supervisor at the institution. The institutional supervisor will coordinate and complete annual evaluations collaboratively with the Records Administrator. The Records Administrator will be promptly informed of records office related situations, including errors in time calculations and employee discipline, as the need arises.

II. CORRECTIONAL TRACKING SYSTEM, DEPARTMENT, & OTHER AUTOMATED RECORDS

A. Data Entry Functions

Whenever possible, data entered in the system shall be the responsibility of the person or program originating the information. The entries shall be entered in accordance with the Corrections Tracking System (CTS) help screens. CTS will accurately reflect an inmate's movement such as overnight hospital stays and placement on or removal from segregated confinement.

B. Output Records

All routine requests for CTS-Siebel generated reports shall be coordinated through the NDCS systems analyst located at Central Office. Requests for functions and changes to data entry systems and electronic records must be submitted for review to the records administrator at the same time the request is submitted to the NDCS systems analyst.

	ADMINISTRATIVE REGULATION Department of Correctional Services State of Nebraska	NUMBER 104.01	Page 7 of 14
		INMATE RECORDS MANAGEMENT	

C. Security and Verification of Data

Specific procedures shall be established to provide for security of the CTS, which will include provisions for both terminal and password security. Additional information regarding these procedures may be obtained from A. R. 104.06, *Computer Equipment and Telephone Usage*. Accessibility to the system should be limited to ensure the protection of the privacy of inmates and staff. In order to assure that complete, accurate and necessary information is contained within the system; procedures shall be established to provide for verification of data both prior to and after inclusion within the system. Procedures should include the following safeguards.

1. Criminal history record information is stored by the computer in such a manner that it cannot be modified, destroyed, accessed, changed, purged or overlaid in any fashion by non-NDCS terminals;
2. Programs are used that will prohibit inquiry, records updates or destruction of records from any other terminal other than NDCS terminals;
3. Destruction of records is limited to designated terminals under the direct control of the NDCS;
4. Operational programs are used to detect and store, for the output of designated NDCS employees, all unauthorized attempts to penetrate any information system, program or file; and
5. Security programs are known only to NDCS employees responsible for criminal history record information control or individuals and agencies pursuant to a specific contract with the NDCS.

III. INMATE TIME COMPUTATIONS

Copies of all commitment orders will be forwarded electronically to the Central Records Office (CRO) the same day they are received. They can be faxed to (402) 742-2349 or scanned and emailed to DCS.CentralRecords@Nebraska.gov. Sentence calculations at the institutional level will be completed by a records manager or records officer and reviewed by the CRO records manager assigned to that facility. CTS 120 and 122 reports will be signed and dated by the originating records manager or officer. The CRO records manager will sign and date the CRO copy of the 120 and 122 reports upon review.

There are seven separate active Nebraska laws as explained below governing the release of every inmate committed to the Department. These statutes, along with the opinions of Nebraska courts and the state Attorney General's office, form the basis of all time calculations. After an inmate is admitted to an institution, the inmate will receive written notice of his/her parole eligibility date and mandatory discharge date (tentative release date). When these dates are changed for any reason, the inmate will be given written notice of the new mandatory discharge date and/or parole eligibility date. Computations of good time will be consistent in all the NDCS' institutions. Records Office personnel in the appropriate institution will answer an inmate's questions regarding the computation of his/her sentence. Specific questions on proper application of the various laws and opinions should be referred to the NDCS' Records Administrator for clarification.

A. 2011 Law (Commonly known as LB 191 - Effective March 16, 2011)

	ADMINISTRATIVE REGULATION Department of Correctional Services State of Nebraska	NUMBER 104.01	Page 8 of 14
		INMATE RECORDS MANAGEMENT	

This law is composed of two types of releases and two types of good time.

1. Discretionary parole by the Board of Parole - Eligibility is based on serving one-half of the minimum term (statutory or court-imposed minimum, whichever is longer). **EXCEPT**, no reduction of sentence shall be applied to any sentence imposing a **MANDATORY minimum term**.
2. Mandatory Discharge - Discharge is based on the block crediting of six month's good time for each year of the maximum term, and pro rata thereof for any part which is less than a year. This good time plus any jail time is deducted from the maximum term of imprisonment to establish the mandatory discharge date.
3. The Department shall reduce the term of a committed offender by three days on the first day of each month following a twelve-month period of incarceration within the Department during which the offender has not been found guilty of a Class I or Class II offense or more than three Class III offenses under the Department's disciplinary code. Reductions earned under this subdivision shall not be subject to forfeit or withholding by the department.
4. Good time reductions granted may be forfeited, withheld and restored by the Warden/Program Administrator with approval of the Director after the inmate has been consulted regarding charges of misconduct

B. 1998 Law (Commonly known as LB 364 - Effective July 1, 1998)

This law is composed of two types of releases and one type of good time.

1. Discretionary parole by the Board of Parole - Eligibility is based on serving one-half of the minimum term (statutory or court-imposed minimum, whichever is longer). **EXCEPT**, no reduction of sentence shall be applied to any sentence imposing a **MANDATORY minimum term**.
2. Mandatory Discharge - Discharge is based on the block crediting of six month's good time for each year of the maximum term, and pro rata thereof for any part which is less than a year. This good time plus any jail time is deducted from the maximum term of imprisonment to establish the mandatory discharge date.
3. Good time reductions granted above may be forfeited, withheld and restored by the Warden/Program Administrator with approval of the Director after the inmate has been consulted regarding charges of misconduct.

C. 1996 Law (Commonly known as LB 371 - Effective July 1, 1996)

This law is composed to two types of releases and two types of good time.

1. Discretionary parole by the Board of Parole - Eligibility is based on serving one-half of the minimum term, **EXCEPT** no reduction of sentence shall be applied to any sentence imposing a **MANDATORY minimum term**.
2. Mandatory discharge - Discharge is based on serving the maximum term minus credit for good time.

	ADMINISTRATIVE REGULATION Department of Correctional Services State of Nebraska	NUMBER 104.01	Page 9 of 14
		INMATE RECORDS MANAGEMENT	

There are two types of good time. Upon admission to the Department, three month's good time (commonly referred to as "statutory good time") is deducted from the maximum term. An additional three month's good time (commonly referred to as "positive time") will be deducted from the maximum term as well. The Nebraska Court of Appeals ruled in Worley v. Houston that all good time, including positive time must be granted at the beginning of the sentence. The total of these two good times, plus any jail time credit, is deducted from the maximum term of imprisonment to establish the mandatory discharge date.

3. Good time reductions granted above may be forfeited, withheld and restored by the WARDEN/PROGRAM ADMINISTRATOR with approval of the Director after the inmate has been consulted regarding charges of misconduct.

D. 1992 Law (Commonly known as LB 816 - Effective July 15, 1992)

This law is composed of two types of releases and one type of good time.

1. Discretionary parole by the Board of Parole in which eligibility is determined by deducting the good time (six months per year) from the minimum sentence (statutory or court-imposed minimum, whichever is longer).
2. Mandatory discharge by the institution with block crediting of six months good time for each year of term, and pro rata thereof for any part which is less than a year. This good time plus any jail time is deducted from the maximum term of imprisonment to establish the mandatory discharge date.
3. Such reductions of the above term may be forfeited, withheld and restored by the Warden/Program Administrator with approval of the Director after the inmate has been consulted regarding charges of misconduct.

E. 1975 Law (Commonly known as LB 567 - Effective August 24, 1975)

This law is composed of two types of releases and two types of good time (good behavior and meritorious).

1. Discretionary parole by the Board of Parole in which eligibility is determined by deducting one type of good time (good behavior) from the minimum sentence (statutory or court-imposed minimum, whichever is longer).
2. Mandatory discharge by the institution with block credits of
 - a. Good behavior good time at the rate of two months for the first year, two months for the second year, three months for the third year and four months for each succeeding year of the term and pro rata for any part thereof which is less than a year.
 - b. Meritorious good time of two months for each year of the sentence. Both types of creditable good time plus jail time, if any, deducted from the full time establishes the mandatory discharge date.

	ADMINISTRATIVE REGULATION Department of Correctional Services State of Nebraska	NUMBER 104.01	Page 10 of 14
		INMATE RECORDS MANAGEMENT	

3. Such reductions of the above terms may be forfeited, withheld and restored by the Warden/Program Administrator with the approval of the Director after the inmate has been consulted regarding the charges of misconduct.

F. Pre-1975 Law (Commonly known as LB 1307 - Effective August 25, 1969; as amended by LB 1499, effective July 6, 1972)

This amended law prescribes a total parole release mechanism. Such mechanism consists of discretionary and mandatory releases; however, the mandatory release component is administratively subdivided as conditional and mandatory releases due to the phraseology of the law. Each type of release shall be credited with two types of good time (good behavior and meritorious) as described below.

1. Every inmate who is confined in the institution shall be entitled to the reduction for good behavior good time from the sentence as follows: Two months on the first year, two months on the second year, three months on the third year and four months for each succeeding year of the term and pro rata for any part thereof which is less than a year. This reduction of time was applied to the sentence at the time of commitment to NDCS.
2. Additionally, every committed inmate shall be entitled to earn meritorious good time at a rate of five days for each month of confinement which is applied as a further reduction of the sentence at the time of the initial work or school assignment within the institution. However, the time that an inmate becomes unassigned from the institution assignment for other than administrative purposes shall not be creditable as time earned.
3. The total of the above reductions, plus jail time, shall be deducted:
 - a. From an inmate's minimum term, to determine the date of eligibility for release on discretionary parole;
 - b. From an inmate's maximum term to determine the date when the release on parole becomes conditional; the release shall become mandatory if all credited/earned good time is lost through misconduct while confined. However, the inmate must be mandatorily released no later than three months prior to the full term.
4. A parole violator may have three types of releases:
 - a. Another discretionary parole by the Board of Parole;
 - b. Mandatory parole (described in Procedure III.E.3. above);
 - c. Discharge at the expiration of the inmate's maximum prison term.
5. The forfeiture and withholding of the above reductions shall be made as follows:
 - a. Any part or all credited good behavior good time;
 - b. Any part or all meritorious good time earned to the date of the commission of the infraction.

	ADMINISTRATIVE REGULATION Department of Correctional Services State of Nebraska	NUMBER 104.01	Page 11 of 14
		INMATE RECORDS MANAGEMENT	

6. Both the good behavior and meritorious good times may be restored, for continuous good conduct thereafter, as may be deemed appropriate by the Warden/Program Administrator.

G. Pre-1969 Law (Effective prior to August 25, 1969)

This law is composed of two types of releases: (1) discretionary parole by the Board of Parole; (2) mandatory discharge by the Board of Parole and Parole Administration with credit of two types of good time commonly referred to as "statutory" (good behavior) good time and "extra earned" meritorious) good time and "blood" credit.

1. The credit of total good time shall be applied in the same manner as described in Procedure III.D.1. and Procedure III.D.2. above.
2. The total of the reductions in Procedure III.D.1 and Procedure III.D.2. above, plus jail credit and blood credit, shall be deducted from the maximum term to determine the date when the discharge from the custody of the state becomes mandatory. Such reductions may be forfeited, withheld and restored by the Warden/Program Administrator after the inmate has been consulted regarding the charges of misconduct.
3. The forfeiture, withholding and restoration of all good time shall be administered the same as outlined in Procedure III.D.5 and Procedure III.D.6. above.

H. In addition, there are many other terms which effect the computation of sentences. The terms are defined as follows:

1. 30-Day Month - All increments of 30 days will be treated as a calendar month for time calculation purposes. Increments of 15 days will be treated as ½ month for time calculation purposes.
2. Jail Time Credit - Jail time credit is awarded by the sentencing judge to give credit for time spent in custody prior to sentencing. Jail time is usually awarded as a specific number of days. These days are converted to years, months and days based on a 30-day month and are deducted from both the minimum and maximum terms. If the commitment order awards jail time from the date of sentence back to a specific prior date, records office personnel will compute the credit. The two dates will be subtracted from each other using a 30-day month to project the amount of credit. In addition, if jail time credit is specifically awarded on each count of consecutive sentences, the jail time credit shall be added together.
3. Backdated Sentences - Occasionally sentence beginning dates are backdated. This usually occurs one of two ways. The first situation arises when the sentencing judge orders the sentence "deemed to commence" at a specific prior date. The other situation is a 90-day evaluator who receives a period of incarceration upon completion of his/her evaluation. Nebraska statutes require the new sentence to commence at the beginning of the original 90-day evaluation. The above procedure shall only apply to inmates who have remained in custody between the two dates referred to above.
4. Dead Time - Dead time is added for the amount of time an inmate is not available to serve his/her court-imposed sentence. Not available means the

	ADMINISTRATIVE REGULATION Department of Correctional Services State of Nebraska	NUMBER 104.01	Page 12 of 14
		INMATE RECORDS MANAGEMENT	

inmate's whereabouts is unknown, out on bond, or he/she may be in custody in another jurisdiction. Dead time is computed on inmates as a result of an escape, release on bond or a parole violation. The amount of dead time is computed by subtracting the date the inmate leaves NDCS custody or absconds to the date the inmate becomes available to NDCS. Inmates apprehended in other states will normally become available to NDCS the date they sign voluntary extradition back to Nebraska. If the inmate refuses to sign extradition, dead time is computed to the date returned to NDCS custody.

5. Parole Good Time – Parole good time will be calculated from the date of parole until the parole has been revoked by the Board of Parole.
6. Forfeiture/Restoration of Good Time - Upon forfeiture of good time for disciplinary reasons, all good time not affecting parole eligibility shall be taken first. This shall be accomplished in the following manner depending upon the good time law governing the inmate's sentence. Good time that is restored shall be restored in the reverse manner in which it was forfeited.

1996 Law (LB 371) - Good time lost for disciplinary reasons can only be forfeited from the maximum term. No good time forfeited for disciplinary reasons may be forfeited from the minimum term.

1992 Law (LB 816) - On indeterminate sentences where there is more good time awarded on the maximum term, good time shall be forfeited from the maximum term only until the good time remaining on the maximum term is equal to the amount of good time awarded on the minimum term. When both good times are equal, additional forfeitures of good time shall be deducted from both the minimum and maximum terms.

1975 Law (LB 567) - All meritorious good time on the maximum term shall be taken until all meritorious good time is forfeited. Once this good time is taken, additional forfeitures of good behavior good time will be deducted from both the minimum and maximum terms. However, good behavior good time forfeited on the minimum term cannot exceed the amount originally awarded. Once the inmate is at full term on the minimum term, any remaining good behavior good time will be deducted from the maximum term until all awarded good time is forfeited.

1969 Law (LB 1307/1499) - All forfeitures of good time affect both the minimum and maximum terms. However, good time forfeited on the minimum term cannot exceed the amount of good time awarded on the minimum term.

Pre-1969 Law - The same procedures for the 1969 law also apply to this law.

I. Additional Sentences

Occasionally an inmate serving a sentence within NDCS receives additional sentences during his/her period of incarceration. These sentences may be either concurrent or consecutive to terms presently being served. Based on a Supreme Court ruling in Nelson vs. Wolff, sentences received after the first sentence is imposed are to be served consecutively unless specifically stated otherwise.

	ADMINISTRATIVE REGULATION Department of Correctional Services State of Nebraska	NUMBER 104.01	Page 13 of 14
		INMATE RECORDS MANAGEMENT	

1. Consecutive sentences.

Current Nebraska statutes provide for adding together the minimum and maximum terms of consecutive sentences. These terms are added together to project a parole eligibility date (PED) and tentative release date (TRD) on the combined sentences.

2. Concurrent sentences.

These terms are calculated independently from any other terms. A TRD and PED should be calculated on the concurrent term and compared with the TRD and PED on the term(s) already being served. The sentence which lasts the longest shall become the "precedent" sentence for time calculation purposes. Occasionally the "precedent" sentence for PED and TRD may not be the same term. Furthermore, there are situations in which the "precedent" sentence may revert back to the other term(s). These matters should be discussed with the NDCS Records Administrator for proper clarification.

IV. COURT RECORDS

Inmates may request transcripts and/or bills of exception directly from the Nebraska District Courts, Court of Appeals, or Supreme Court. The Nebraska Supreme Court has adopted rules for obtaining these documents. This procedure applies to incarcerated litigants. All requests for these documents must be made directly by the inmate to the appropriate court. The court may send the inmates copies of the requested documents. Original Court documents will no longer be sent to inmates. NDCS will not request records for inmates, nor act on their behalf. Whether or not a transcript is issued is up to the Court.

REFERENCE

- I. STATE STATUTE - §83-1,105; §83-1,106; §83-1,170; §83-1,178; §83-1,197
 §29-2632 Laws 1921, 1922, 1929 (pre-1969 good time law);
 §83-1,107 Laws 1969 (LB 1307 good time law; Laws 1972 (LB 1499 good time law); Laws
 1975 (LB 567 good time law); Laws 1992 (LB 816 good time law); Laws 1995 (LB 371 good
 time law); Laws 1997(LB 364 good time law)
- II. LITIGATION - Wray V. Clarke 4:CV93-3275
- III. ATTACHMENTS - Order of filing sheet, Inmate Management File Audit Form
- IV. AMERICAN CORRECTIONAL ASSOCIATION (ACA) STANDARDS
 - A. Standards for Adult Correctional Institutions (ACI) (4th edition): 4-4095, 4-4096, 4-4097, 4-4098, 4-4099, 4-4100 and 4-4101.
 - B. Performance Based Standards for Adult Community Residential Services (ACRS) (4th edition): 4-ACRS-6A-10, 4-ACRS-7D-08, 4-ACRS-7D-09, 4-ACRS-7D-10, 4-ACRS-7D-11
 - C. Performance Based Standards for Adult Probation and Parole Field Services (APPFS) (4th edition): 3-3029, 3-3070, 3-3101, 3-3102, 3-3103, 3-3104, 3-3105, 3-3106, 3-3108, 3-3110 and 3-3141.

	ADMINISTRATIVE REGULATION Department of Correctional Services State of Nebraska	NUMBER 104.01	Page 14 of 14
		INMATE RECORDS MANAGEMENT	

D. Standards for Administration of Correctional Agencies (CO) (2nd Edition): 2-CO-1E-09

1998 Law (Commonly known as **LB 364** - Effective July 1, 1998)

This law is composed of two types of releases and one type of good time.

1. Discretionary parole by the Board of Parole - Eligibility is based on serving one-half of the minimum term (statutory or court-imposed minimum, whichever is longer). **EXCEPT**, no reduction of sentence shall be applied to any sentence imposing a **MANDATORY minimum term**.

2. Mandatory Discharge - Discharge is based on the block crediting of six month's good time for each year of the maximum term, and pro rata thereof for any part which is less than a year. This good time plus any jail time is deducted from the maximum term of imprisonment to establish the mandatory discharge date.

3. Good time reductions granted above may be forfeited, withheld and restored by the Warden/Program Administrator with approval of the Director after the inmate has been consulted regarding charges of misconduct.

1975 Law (Commonly known as **LB 567** - Effective August 24, 1975)

This law is composed of two types of releases and two types of good time (good behavior and meritorious).

1. Discretionary parole by the Board of Parole in which eligibility is determined by deducting one type of good time (good behavior) from the minimum sentence (statutory or court-imposed minimum, whichever is longer).

2. Mandatory discharge by the institution with block credits of

a. Good behavior good time at the rate of two months for the first year, two months for the second year, three months for the third year and four months for each succeeding year of the term and pro rata for any part thereof which is less than a year.

b. Meritorious good time of two months for each year of the sentence.

Both types of creditable good time plus jail time, if any, deducted from the full time establishes the mandatory discharge date.

3. Such reductions of the above terms may be forfeited, withheld and restored by the Warden/Program Administrator with the approval of the Director after the inmate has been consulted regarding the charges of misconduct.

**State of Nebraska
Workplace Investigation**

Statement of Mickie Baum

On July 30, 2014, I participated in an interview with attorneys from Jackson Lewis, P.C. I was informed these attorneys were hired by the State of Nebraska to conduct a workplace investigation.

Prior to the interview, I was advised that my participation was voluntary, that Jackson Lewis, P.C. does not represent me in this matter and that any information I provided may be shared with and used by the Director of the Department of Correctional Services, Michael Kenney, and the Director of the Department of Personnel, Ruth Jones.

My workplace interview was not recorded. The statement below is a summary of the information I provided and not a complete transcript.

I had the opportunity to personally edit the statement below prior to signing.

I agree that the information below is true and correct.

I currently manage the Nebraska Department of Correctional Services ("NDCS") Special Services division. I began this position in June 2013. I served as a Records Manager II for the penitentiary from July 2007 to June 2013. I have been with NDCS since December 2001. I started as a switchboard operator.

My current supervisor is Kyle Poppert, but Poppert was not my supervisor when I was a penitentiary Records Manager. I had sentencing calculation duties when I was a Records Manager for the penitentiary. I do not have formal sentence calculation duties in my current position, but I help with sentence calculations from time to time as needed.

Ron Riethmuller taught me how to perform sentence calculations. I have what a call a "Bible" with all of the documents I rely on in making sentence calculations, such as offense codes, county codes, Attorney General Opinions and statutes. We also keep a book of Attorney General Opinions relevant to sentencing calculations in each NDCS location.

If I have a question about how to interpret a particular sentencing order, I generally go to the Records Administrator. I may also go directly to the Legal Division with questions. I ask the Legal Division questions on sentencing issues fairly often. For example, I go directly to the Legal Division and speak with whomever I can find on bond-out issues. I do not believe I am expected to run issues through my chain of command before consulting with the Legal Division.

Jeannene Douglass forwarded the *State v. Castillas* case to me in February 2013. That email is included with this statement as "Attachment A." I read it, along with her email indicating to Linda Willard that NDCS was not calculating mandatory release dates the way the Court indicated in *Castillas*. I did not make any changes to my sentencing calculations based on *Castillas* at the time. I did not feel it was my place to make that decision and the Records Managers needed further guidance on the issue first. I think Jeannene sent this email to me because she was considering retirement and wanted me to be updated on Records Division issues in the event I was her replacement.

On February 19, 2013, Douglass forwarded an email to me that she received from Kyle Poppert. In the email, Poppert asked Douglass and Ginger Schurter to set forth the NDCS current practice on calculating mandatory release dates, how that practice differs from what is set forth in the *Castillas* case, and what her recommendations are regarding keeping or changing the current practice. The forwarding email is attached to this statement as "Attachment B."

In her February 19, email to me, Douglass states, "thought you would get a kick out of this" or something similar. I think she made this statement out of frustration in being asked to recommend a decision on this issue. It does not always seem that Poppert's heart is in records management. He depends on the Records Managers for knowledge of records issues, rather than learning them himself. This is a big contrast from the former Records Administrator, Ron Riethmuller. Poppert oversees many things and it sometimes seems like the Records Division is running itself.

I attended a Sentencing Committee meeting on October 31, 2013. I remember the meeting and I remember the discussion we had on the *State v. Castillas* case. I recall that we laid out how we were calculating mandatory release dates at the time and the difference between that and what was in the *Castillas* case. I recall George Green saying, "I guess they are putting us on notice," or something similar. I also recall Green saying, "I will look into it," or something similar. I also remember that Green said that NDCS was not a party to the case and that the ruling was not directed at NDCS. I thought Green's statements that day indicated he would follow up on the issue. I do not recall anyone disagreeing, or that anyone was specifically directed to take further action. My impression was that we were to await additional direction. I do not recall any discussion of Linda Willard or her thoughts in the meeting.

In my interview, I reviewed the minutes of the October 31, 2013, meeting which are attached at "Attachment C" with this statement. I believe those minutes are an accurate reflection of the discussion in the meeting.

The next time the *Castillas* case came up for me was in June 2014, when Dawn Renee called me to discuss a call from the Omaha World Herald. Dawn Renee directed the Records Managers in changing the way we do mandatory release date calculations and in recalculating all inmate sentences back to those sentenced on September 24, 1995 or after in light of *Castillas*. I now

Speak directly with James Smith in the Attorney General's Office if I have questions on recalculation of sentences in light of *Castillas*.

I believe that, in addition to the recalculations we are performing, we need to be looking at the way *Castillas* affects other laws and calculations. I will continue to bring these issues to Poppert's attention.

I have no additional information I would like to offer in this statement.

The statement provided above was voluntary. I had the opportunity to make changes to the statement before signing.

By signing this statement, I agree the contents are true and correct.


Mickie Baum

7-31-14
Date

Blum, Kathy

From: Douglass, Jeannene
Sent: Monday, February 11, 2013 10:39 AM
To: Baum, Mickie
Subject: FW: sentence calculation

*Jeannene Douglass
Records Manager II
Central Records Office
Nebraska Department of Corrections
PH: 402-479-5773
E-mail: jeannene.douglass@nebraska.gov*

From: Douglass, Jeannene
Sent: Friday, February 08, 2013 1:41 PM
To: Willard, Linda
Subject: RE: sentence calculation

Wouldn't the right thing to do be to continue the way we have always done it because it, too, was tried and tested. I don't know. it would be a real mess to have to go back in and recalculate everyone who has mandatory minimum sentences. What do you think??

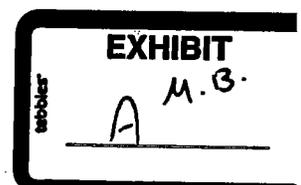
*Jeannene Douglass
Records Manager II
Central Records Office
Nebraska Department of Corrections
PH: 402-479-5773
E-mail: jeannene.douglass@nebraska.gov*

From: Willard, Linda
Sent: Friday, February 08, 2013 1:19 PM
To: Douglass, Jeannene
Subject: RE: sentence calculation

Note that the Supreme Court said the Dist. Court was wrong in how they calculated. If you are doing it differently than what the Supreme Court said is the "correct" way to calculate, do you decide to stay with the "right" way or go with what the Supreme Court said is the correct way?

From: Douglass, Jeannene
Sent: Friday, February 08, 2013 11:48 AM
To: Willard, Linda
Cc: Poppert, Kyle
Subject: RE: sentence calculation

The statements in this regarding the calculation of parole eligibility are correct. The manner presented regarding the discharge date calculation is not correct.



Parole eligibility has always been calculated by adding the mandatory minimum required by law to the date the sentence begins. IF the minimum sentence is greater than the mandatory minimum term, one-half of the remainder is added to the mandatory minimum term to provide the total minimum sentence to be served. Any jail credit is credited to the minimum term.

However, Mr. Castillas will not serve 52 ½ years for discharge; the inmate must serve either one-half of the maximum term less jail credit OR the Mandatory Minimum term, whichever is longer, before being discharged from the sentence. The discharge date is not calculated in the same manner as the parole eligibility date.

In Mr. Castillas' case, he is serving a 30-year minimum sentence, 25 years of which are mandatory and not eligible for good time application. He will become eligible in 27 ½ years (25 years plus ½ of the remaining 5 years) less 379 days jail credit.

Mr. Castillas will discharge, at the very earliest, after serving one-half of the maximum 80-year sentence (40 years less 379 days jail credit). The 25-year mandatory minimum is less than the 40 years he will serve to be discharged.

Jeannene Douglass
Records Manager II
Central Records Office
Nebraska Department of Corrections
PH: 402-479-5773
E-mail: jeannene.douglass@nebraska.gov

From: Willard, Linda
Sent: Friday, February 08, 2013 9:41 AM
To: Poppert, Kyle; Douglass, Jeannene
Subject: sentence calculation

The attached case came down from the Nebr. Supreme Court today. Starting at the bottom of p. 188 they discuss sentence calculation. It is my understanding that this is how you currently do the calculation. Others in the office thought you might be doing it differently. So I am sending this to you so you can make sure you are doing the calculation in accordance with the Supreme Court's direction.

From: Douglass, Jeannene
Sent: Tuesday, February 19, 2013 8:39 AM
To: Baum, Mickie
Subject: FW: Castillas #74035

Thought you might get a kick out of this e-mail from KP. Specially the last sentence~!!!

*Jeannene Douglass
Records Manager II
Central Records Office
Nebraska Department of Corrections
PH: 402-479-5773
E-mail: jeannene.douglass@nebraska.gov*

From: Poppert, Kyle
Sent: Sunday, February 17, 2013 11:24 AM
To: Douglass, Jeannene; Shurter, Ginger
Subject: Castillas #74035

Jeannene, Ginger
Regarding the Castillas #74035 case you have been in discussion with Linda Willard.

I need you to work with Ginger and draft a response to George Green for my review on Friday.

I would like you to explain our current practice, the expected practice under the ruling of the Supreme Court and why you believe our current practice is the proper course.

NDCS and the court are relying on the same case history to arrive at our decisions. I think the court is misinterpreting the previous cases. Anyway we need to be able to explain this to George.

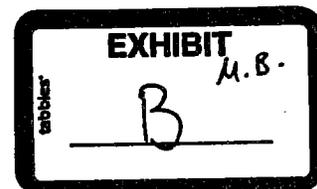
I do want to caution folks, our current efforts to reduce our inmate population has nothing to do with how we apply good time laws. The law is the law and we will act accordingly.

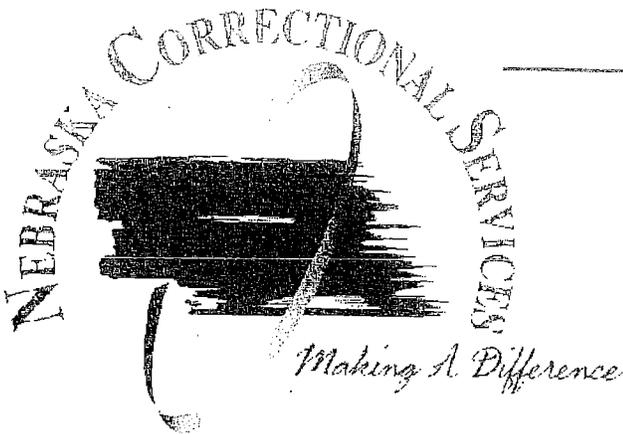
Thanks,

Kyle

Kyle J. Poppert
Classification and Inmate Records Administrator
Nebraska Department of Correctional Services
Programs & Community Services Division
Phone: (402) 479-5750
Cellular (402) 326-2423
Fax: (402) 742-2349
Kyle.Poppert@nebraska.gov

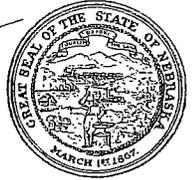
Change is inevitable, growth is optional.





STATE OF NEBRASKA

Department of Correctional Services
Dave Heineman, Governor
Michael Kenney, Director



Date: October 31st, 2013

Time: 9am

Subject: Sentence Review Committee Meeting Minutes

Present: Kyle Poppert, Kathy Blum, Jeff Beatty, Mickie Baum, George Green, Sharon Lindgren, Ginger Shurter, Nikki Peterson,

Absent: NONE

Agenda:

Current Business:

State v. Banes- Sentences: When concurrent sentences are imposed the jail time credit (JTC) is applied against EACH concurrent sentence, because the longest sentence determines the offender's actual length of time in prison.

Issue: Current calculations provide the JTC only applied to the initial sentence.

Status: Mickie Baum is currently auditing sentences to catch all changes. This list of changes is very long; currently Mickie is the only staff working on this list. As facilities records staff are able, the list will be broken down by facility.

Conclusion: We audit these sentences to our best abilities. If a judicial issue arises as a result we will handle it then.

DUI- Mandatory Minimum: State Statue language interpretation of "at least" meaning a mandatory minimum sentence.

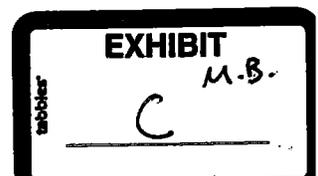
Status: Mickie Baum is currently working recalculating sentences for NSP and OCC, all other facilities are complete.

Conclusion: Again, audit to the best of our abilities. Notify the inmates of the changes. And provide them with a consistent response when questions arise.

George Shepard v. Houston- District Court Decision- Shepard a sex offender who will be required to serve his full term for failing to provide his DNA as outlined in the DNA Identification Act effective July 15, 2010. District Court ruled unconstitutional for the DCS to withhold any good time.

Issue: There are 28 other inmates who fall under this criteria.

Conclusion: Will the Attorney General appeal the decision. Future issues could arise from this case.



Hatten 78546: Wrote an Inmate interview request to the Records Administrator to have his sentenced reviewed for a Jail time Credit with the intention he deserved a lesser sentence. Mickie Baum reviewed his sentence and noticed the sentence was indeed entered into CTS incorrectly.

Status: Mickie has recalculated the sentence. She discovered the new calculation actually increased Hatten's #78546 length of stay.

Conclusion: The sentence should be calculated correctly, then give notification to the inmate and appropriate staff at WEC. Hatten #78546 is currently housed at the WEC, based off new calculations he is no longer qualified for the program. And will soon be transferred to the NSP.

State v. Castillas: The Nebraska Supreme Court affirmed the district court's decision; however the Supreme Court has made an assumption of how the DCS is calculating sentences on the maximum term when there is a mandatory minimum.

Issue: Our current practice is different than that of the court's assumption.

Status: We need to clarify exactly what the Supreme Court's intention is on this, before we as a department act.

Conclusion: We have been performing calculations our current way for years. We are now aware of this situation, we will act when we are specifically told our current way is wrong and it needs to be changed.

New business:

Revised State Statute 83-187- The DCS currently complies with sections (1) and (2) but not in compliance with section (3) the DCS shall provide a copy of the discharge to the court, county sheriff, and local police department if applicable.

Issue: There is no consistency with contact persons to be able to provide these copies.

Possible solution: Develop a template of "Inmate Release or Discharge" to include his release date, that will notify county courts and sheriffs. This notification includes Parolees and Discharges, will not to include the death of an inmate or RFP. Possibly develop an automated system that would send out weekly notifications AFTER the inmate has ACTUALLY been released from a facility. Aim to implement by December 1st, 2013. Have Legal proof the template before its implemented.

Attorney General opinion regarding State Ombudsman reviewing of inmate files. Per state statute the Ombudsman office is allowed access to inmate files. Due to confidentiality purposes copies made from inmates file should not be shared and solely used by the ombudsman.

Solution: If the ombudsman office needs a copy of any documents from an inmate's file, require them to send us an email requesting specific documents and we shall provide them. This is to protect records staff by showing a date and time the request was received and what exact documents were provided. (Notify Director Kenney prior to making this change.)

Next Meeting: TBA

**State of Nebraska
Workplace Investigation**

Summary of Interview of Bob Houston

On August 1, 2014, attorneys from Jackson Lewis, P.C. interviewed Bob Houston, former Director of the Nebraska Department of Correctional Services ("NDCS"). Prior to the interview, Mr. Houston was informed Jackson Lewis was hired by the State of Nebraska to conduct a workplace investigation.

Prior to the interview, Mr. Houston was informed his participation was voluntary, that Jackson Lewis does not represent him in this matter and that any information he provided may be shared with and used by the Director of the Department of Correctional Services, Michael Kenney, and the Director of the Department of Personnel, Ruth Jones.

The workplace interview was not recorded. The statement below is a summary of the information Mr. Houston provided and is not a complete transcript.

Mr. Houston had the opportunity to personally edit the information below.

Mr. Houston was the Director of the NDCS from March 2005 to September 16, 2013. Immediately prior to that time, he was the Director of Corrections for Douglas County for approximately two years. He was a NDCS employee for approximately 28 ½ years before his work with Douglas County.

The NDCS has approximately 235-240 policies. Each policy is assigned to a Deputy Director to review and update each year. Some policies may be assigned to the Legal Division, but Mr. Houston is not aware of which policies those may be.

During Mr. Houston's time as Director of NDCS, the Agency Legal Division was generally responsible for personnel matters, keeping the Director and executive staff advised on legal issues affecting the agency, providing guidance on inmate appeals of disciplinary records and consulting in meetings or on miscellaneous legal issues as requested.

As General Counsel for NDCS, George Green was a member of the NDCS executive staff. Mr. Houston generally expected that Mr. Green would keep him apprised on legal issues of note affecting the agency.

During Mr. Houston's time as Director of NDCS, the Attorney General's Office generally handled inmate issues.

It was not common for a representative of the Attorney General's Office to contact Mr. Houston directly regarding issues affecting the agency, but this did occur on occasion.

It was common for representatives of the Attorney General's Office to contact non-attorney NDCS employees directly, rather than working through the NDCS Legal Division. For example, there is an administrative assistant assigned to handle litigation at each of the 10 NDCS facilities in Nebraska. Representatives of the Attorney General's Office may communicate directly with those administrative assistants on litigation issues, such as collecting incident reports and other paperwork.

During Mr. Houston's time as Director of NDCS, there was no protocol for communication of decisions of note by the Attorney General's Office to NDCS. It was not expected that these would be conveyed through any one way in particular.

The first time Mr. Houston heard about the *State v. Castillas* case was when he picked up the newspaper a few weeks ago and read about it. This occurred sometime in June or July 2014. No one notified Mr. Houston of the *Castillas* case or discussed it with him prior the Omaha World Herald's recent articles on the issue. Mr. Houston has not read the *Castillas* decision.

If NDCS employees knew that NDCS was not calculating prison sentences the way the Court outlined in the *Castillas* case, they should have informed the Director of NDCS. In particular, as General Counsel and a member of the executive team, George Green should have told the Director if this was the case.

If George Green reviewed the *Castillas* decision and found that NDCS' current practice was in accordance with the decision, Mr. Green had the authority to decide NDCS was not required to take further action. If this was the case, Mr. Green was not required to speak with the Director of NDCS.

If George Green reviewed the *Castillas* decision and found that NDCS' current practice was not in accordance with the decision, Mr. Green had a responsibility to bring that to the attention of the Director and did not have authority to decide the agency would continue a practice different from that set forth in the Supreme Court's decision.

Mr. Houston has not spoken with Mr. Green about the *Castillas* case at all. Mr. Houston has spoken with Mr. Green once recently, just to ask how Mr. Green was doing.

Mr. Houston had nothing else to offer with regard to this investigation. He chose not to sign a written statement, but he did have the opportunity to read and edit this written summary of his interview.

**State of Nebraska
Workplace Investigation**

Statement of Michael Kenney

On August 4, 2014, I participated in an interview with attorneys from Jackson Lewis, P.C. I was informed these attorneys were hired by the State of Nebraska to conduct a workplace investigation.

Prior to the interview, I was advised that my participation was voluntary, that Jackson Lewis, P.C. does not represent me in this matter and that any information I provided may be shared with and used by the Director of the Department of Correctional Services, Michael Kenney, and the Director of the Department of Personnel, Ruth Jones.

My workplace interview was not recorded. The statement below is a summary of the information I provided and not a complete transcript.

I had the opportunity to personally edit the statement below prior to signing.

I agree that the information below is true and correct.

I started working for the Nebraska Department of Correctional Services ("NDCS") as a correctional rehabilitation counselor in 1977. I was Assistant Deputy Secretary of Corrections, serving as regional commander for six corrections facilities in the State of Washington, from May 2006 to October 2008. Otherwise, I have held positions of progressive responsibility with NDCS from 1977 to the present, including warden of several facilities.

I was appointed Director of NDCS by Governor Dave Heineman on September 25, 2013, following the retirement of former Director Bob Houston. I serve at the pleasure of the Governor.

I have five Deputy Directors, including: Robin Spindler, Deputy Director of Administrative Services; Frank Hopkins, Deputy Director of Adult Institutions; Larry Wayne, Deputy Director of Programs and Community Services; Dr. Randy Kohl, Deputy Director of Health Services and John McGovern, Deputy Director of Industries. I am also the direct supervisor of Traci Hanson, Administrative Assistant I; Dawn-Renee Smith, Legislative Coordinator; Jeffry Beaty, Planning and Research; and George Green, General Counsel.

Larry Wayne oversees the NDCS Records Division. The role of the Records Division is, very generally, to calculate sentences, determine parole eligibility dates, handle warrants and extraditions and work closely with the Parole Board to maintain inmate files and databases.

The role of the NDCS Legal Division is to provide legal advice on various aspects of correctional practice. The Legal Division is expected to take a proactive approach to protecting NDCS from litigation, and to ensure we are well-prepared and in a strong legal position if litigation arises. The Legal Division is also expected to ensure our Department practices are in accordance with state and federal law. The Legal Division is responsible for keeping the NDCS executive team advised of legal developments, provides training on various legal issues and handles various administrative appeal processes.

The role of the NDCS General Counsel is, very broadly, to protect the agency, and in particular the executive team, from legal vulnerability. In the position of agency Director, I make a great number of discretionary decisions each day. I expect the General Counsel to keep me advised of legal and policy issues affecting the agency, so that my decisions are well-informed. The NDCS General Counsel is a member of the executive team. I speak with General Counsel George Green at least a few times a week.

The Attorney General's Office defends NDCS in the event of a lawsuit, but I expect the NDCS Legal Division to be proactive on legal issues affecting the agency. I also rely on the legal guidance provided by the Attorney General's Office a great deal. In the event NDCS attorneys would disagree with the Attorney General's Office, I would defer to the authority of the Attorney General's Office.

Although I am relatively new to my position, I do not see that there is a past protocol for communication of significant developments from the Attorney General's Office to NDCS. Our agency has enjoyed a strong relationship with the Attorney General's Office for a long time, and legal advice from the Attorney General's Office has come to NDCS through a variety of means. In light of recent events, clarification of the proper procedure for notifying our agency of legal developments and issues may be in order.

I first became aware of the Nebraska Supreme Court's decision in *State v. Castillas* in mid-June 2014. A reporter from the Omaha World Herald contacted Dawn-Renee Smith and let her know the World Herald was planning to publish an article indicating NDCS sentencing calculations were not consistent with the method set forth in *Castillas*. Smith came to me immediately. I did not understand the impact of the *Castillas* case at the time, but it came to light shortly thereafter.

After Smith received a call from the Omaha World Herald, I began speaking with employees informally to gather information. I recall that Larry Wayne was on vacation at the time, so Smith assisted me in gathering information. As a result of this information gathering, I learned that NDCS was not calculating mandatory release dates using the method provided in the *Castillas* case. I learned that there was a significant amount of miscommunication surrounding that decision and its impact on NDCS. I also learned that several employees made assumptions about the case that were not true, and that too much authority was delegated to the Records Managers in this situation.

It also appears to me that Kyle Poppert may have had too much responsibility to complete all of his work properly. Poppert is a very hard worker, and certainly has the skill and ability to handle inmate sentencing issues. However, this area requires intensive oversight, and Poppert may not have had the time to exercise the necessary level of oversight.

When I learned that NDCS' method of calculating mandatory release dates was different than that provided in the *Castillas* case, I immediately took steps to implement the method set forth in *Castillas*. I also asked Larry Wayne to audit all sentencing calculation practices and provide me with a report on those methods and how they should be improved. I also worked with the Attorney General's Office, Kyle Poppert and NDCS Records Managers to recalculate the sentences of all inmates with mandatory minimum sentences issued from 1995 to the present, using the method set forth in *Castillas*.

I recently sent an email message to all NDCS employees advising them that, if they have concerns about any current practice of NDCS, they should bring those concerns directly to me.

It is my understanding that the NDCS Legal Division, and in particular George Green, was aware that the NDCS sentence calculation practice was different than that set forth in *Castillas*. Green had the authority to review the *Castillas* case and, if NDCS was acting in accordance with the decision, to decide no change was required by the agency.

However, if Green knew that NDCS was engaging in a practice different from that provided in a Supreme Court decision, Green did not have authority to ignore the decision or to decide the agency would not follow it, even if NDCS was not a party to the case. Instead, Green had an obligation to bring to my attention the fact that the agency was calculating inmate sentences differently than the Nebraska Supreme Court.

Additionally, I am aware that Linda Willard sent the *Castillas* case to Poppert and Douglass, and that Green was aware Willard recommended NDCS follow the calculation method set forth by the Court in *Castillas*. Linda Willard provided excellent legal counsel to NDCS for many years. When I became a NDCS executive, Linda Willard is one of the first names I learned outside of the agency. If Green was making a decision contrary to Willard's advice, he had an obligation to consult with the Director. I would have required Green to provide a significant defense before acting contrary to the *Castillas* decision and to Willard's advice.

Based on the information available to me, it appears to me that Green should have brought the *Castillas* case to the attention of Bob Houston in February 2013. It is inexcusable to me that no one brought this matter to Houston's attention before his retirement.

I am also aware that the Records Division and Legal Division met in October 2013, and yet again, decided not to follow the sentence calculation method set forth in *Castillas*. No one advised me of this decision or consulted with me about the matter. I should have been notified

of the issue prior to the meeting. In addition, someone should have been tasked to follow up after the Sentencing Review Committee meeting to ensure a legal resolution of the matter. Based on a review of the meeting minutes, it is incredulous to me that the Legal Division and Records Administrator left the meeting with the understanding that someone needed to follow up on the issue but delegated no one to do so.

The impact of certain NDCS employees' failure to act on the *Castillas* decision has been dramatic. Public confidence in NDCS is significantly eroded. NDCS employees are fearful and anxious about their positions and the future of NDCS in general. Employees who were in no position to act on the *Castillas* case have been placed in a position in which they feel their jobs may be at risk. Additionally, it appears to me committed and conscientious employees who were in no position to act have been attacked, publically in some cases, due to the apparent negligence of a few responsible parties. I cannot understate the damage this situation has caused our agency. I believe that we may experience repercussions of this issue for months, if not years, to come.

I have no additional information I would like to offer in this statement.

The statement provided above was voluntary. I had the opportunity to make changes to the statement before signing.

By signing this statement, I agree the contents are true and correct.



Michael Kenney

8-5-14

Date

**State of Nebraska
Workplace Investigation**

Statement of Ginger Schurter

On August 4, 2014, I participated in an interview with attorneys from Jackson Lewis, P.C. I was informed these attorneys were hired by the State of Nebraska to conduct a workplace investigation.

Prior to the interview, I was advised that my participation was voluntary, that Jackson Lewis, P.C. does not represent me in this matter and that any information I provided may be shared with and used by the Director of the Department of Correctional Services, Michael Kenney, and the Director of the Department of Personnel, Ruth Jones.

My workplace interview was not recorded. The statement below is a summary of the information I provided and not a complete transcript.

I had the opportunity to personally edit the statement below prior to signing.

I agree that the information below is true and correct.

I am a Nebraska Department of Correctional Services ("NDCS") Records Manager II. I have been in that position for approximately 3 years. Prior to that time, I was a Records Manager I for approximately 6-7 years. I have been a NDCS employee since 1977, other than about a year during which I worked for the Department of Education.

I review sentence calculations for the Diagnostic and Evaluation Center. Those calculations are first prepared at the facility and I check them for accuracy. I handle discharge records, so I must be aware of sentence calculation methods, but I do not prepare calculations on a daily basis.

I do not recall the first time I was made aware of the Nebraska Supreme Court's decision in *State v. Castillas*. During my interview, I read an email dated February 17, 2013, from Kyle Poppert to Jeannene Douglass and me. That email is enclosed with this statement as "Attachment A." I do not recall receiving this email or what my actions may have been in response to the email.

Though I do not recall for sure, I believe the reason I may have been included on Poppert's email to Douglass was that Douglass was often too wordy in her communications. Poppert likely wanted me to work with Douglass to provide a more clear and concise response. I do not recall working with Douglass on a response to Poppert or even speaking to her about the subject.

I do not recall speaking to anyone about the *Castillas* case prior to October 31, 2013.

I attended the October 31, 2013, Sentencing Review Committee meeting. I believe this meeting was initiated by Kyle Poppert to be sure the Records Division was not missing any important issues. I recall that, prior to that meeting, I found a statute that required NDCS to provide notice of inmate discharge to county attorneys and sheriff of committing counties. I asked that the statute be placed on the meeting agenda for discussion.

During the October 31 meeting, I also recall participating in a discussion about an Attorney General's Opinion addressing what information the Ombudsman's Office could have from NDCS. I was interested in this topic because we had recent visits from the Ombudsman, and received requests for information at the time.

I have no independent recollection of a discussion of the *Castillas* case in the Sentencing Review Committee meeting. I recall that it seemed from conversations that day, that some of the issues we were discussing had already been addressed outside the meeting and I understood that the Legal Division agreed to follow up on some issues, but I do not recall specifics.

I am not able to look at the Sentencing Review Committee meeting minutes and state whether or not they are accurate because I do not recall the meeting with total clarity. In reviewing the meeting minutes now, I am sure I would have faith that either George Green as General Counsel, or Sharon Lindgren as a former Assistant Attorney General, would have followed up on the *Castillas* case, but I do not recall whether that was discussed in the meeting or not.

The first time I recall hearing about the *Castillas* case was a few months ago, when NDCS Records Managers were tasked with recalculating mandatory release dates for inmates with mandatory minimum sentences. The more experienced records managers recalculated these inmates' sentences at the direction of Michael Kenney. Kyle Poppert, Larry Wayne and Michael Kenney were in and out of the room on the days we did the sentence recalculations.

I have seen the list of inmates who had recalculated sentences. I know that this list changed over time, as we worked through the calculation changes. I continue to be worried about the conversion of these calculations in our system, and I know that Mickie Baum has raised this concern more than once. I said something at one of our meetings, then Mickie told me she said something to Director Mike Kenney the next day.

I would not inquire directly to the NDCS Legal Division regarding sentencing questions. I would not take a sentencing question directly to the NDCS Legal Division or the Attorney General's Office. I would bring those questions to the Records Administrator and seek advice through my chain of command. I cannot speak for how others would handle a legal question in sentencing calculations, but I would work through my chain of command.

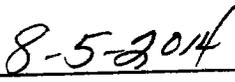
I have no additional information I would like to offer in this statement.

The statement provided above was voluntary. I had the opportunity to make changes to the statement before signing.

By signing this statement, I agree the contents are true and correct.



Ginger Schurter



Date

From: Douglass, Jeannene
Sent: Tuesday, February 19, 2013 8:39 AM
To: Baum, Mickie
Subject: FW: Castillas #74035

Thought you might get a kick out of this e-mail from KP. Specially the last sentence~!!!

*Jeannene Douglass
Records Manager II
Central Records Office
Nebraska Department of Corrections
PH: 402-479-5773
E-mail: jeannene.douglass@nebraska.gov*

From: Poppert, Kyle
Sent: Sunday, February 17, 2013 11:24 AM
To: Douglass, Jeannene; Shurter, Ginger
Subject: Castillas #74035

Jeannene, Ginger
Regarding the Castillas #74035 case you have been in discussion with Linda Willard.

I need you to work with Ginger and draft a response to George Green for my review on Friday.

I would like you to explain our current practice, the expected practice under the ruling of the Supreme Court and why you believe our current practice is the proper course.

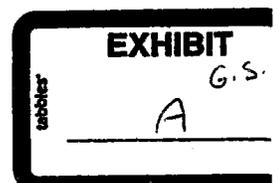
NDCS and the court are relying on the same case history to arrive at our decisions. I think the court is misinterpreting the previous cases. Anyway we need to be able to explain this to George.

I do want to caution folks, our current efforts to reduce our inmate population has nothing to do with how we apply good time laws. The law is the law and we will act accordingly.
Thanks,

Kyle

Kyle J. Poppert
Classification and Inmate Records Administrator
Nebraska Department of Correctional Services
Programs & Community Services Division
Phone: (402) 479-5750
Cellular (402) 326-2423
Fax: (402) 742-2349
Kyle.Poppert@nebraska.gov

Change is inevitable, growth is optional.



**State of Nebraska
Workplace Investigation**

Statement of Linda L. Willard

On August 4, 2014, I participated in an interview with attorneys from Jackson Lewis, P.C. I was informed these attorneys were hired by the State of Nebraska to conduct a workplace investigation.

Prior to the interview, I was advised that my participation was voluntary, that Jackson Lewis, P.C. does not represent me in this matter and that any information I provided may be shared with and used by the Director of the Department of Correctional Services, Michael Kenney, and the Director of the Department of Personnel, Ruth Jones.

I understand that that the State of Nebraska did not waive its attorney-client privilege with me for the purpose of my workplace interview. I do not believe that I provided any information during my interview which would be subject to attorney-client privilege between me and the State of Nebraska. I did not intend to provide privileged information during my interview.

My workplace interview was not recorded. The statement below is a summary of the information I provided and not a complete transcript.

I had the opportunity to personally edit the statement below prior to signing.

I agree that the information below is true and correct.

I worked in the Nebraska Attorney General's Office for 32 years. I retired on May 9, 2014. I handled a variety of issues throughout my time in the Attorney General's Office. At the time of my retirement, I was the Chief of Inmate Litigation and the Ethics Officer for the Attorney General's Office. I reported to Jim Smith at the time of my retirement.

On February 8, 2013, I sent a copy of the Nebraska Supreme Court's decision in *State v. Castillas*, to Jeannene Douglass and Kyle Poppert at the Nebraska Department of Correctional Services ("NDCS"). I sent the decision to Douglass and Poppert because they were the ones at NDCS who handled sentencing calculations.

With regard to the *Castillas* case, I recall that Jim Smith let me know a decision came down from the Nebraska Supreme Court that involved inmate sentencing and that NDCS should be made aware of the decision. I was working on a brief or another project at the time, and I recall thinking the *Castillas* case had not been handled by the inmate litigation and that the attorney

who handled the case could have sent it to NDCS. However, I sent the decision to Poppert and Douglass to ensure NDCS was aware of the case.

At the time the Supreme Court issued the *Castillas* decision, it was my impression that NDCS was calculating mandatory minimum sentences in the same manner the Court used in its decision. I had that impression from prior cases I handled. However, I now realize that those cases involved calculation of parole release dates for inmates with mandatory minimum sentences, rather than mandatory release dates for those inmates.

I have a vague recollection of speaking with Jeannene Douglass after I sent her an email with the *Castillas* case attached. My recollection is that Douglass explained to me the manner in which NDCS was calculating mandatory release dates and that she thought this was the way the Director wanted them done. Douglass provided no support for her statement that this way the way the Director wanted them done, other than to state it was "her belief."

I did not agree with Jeannene Douglass that NDCS should continue to calculate mandatory release dates in a manner inconsistent with the method used in *Castillas*. I did not tell Douglass to continue this practice. I am aware that, on February 8, 2013, Douglass sent an email to George Green and Kyle Poppert stating that I agreed with her that NDCS should continue its current sentence calculation process. I know that I was copied on Douglass' email to Green and Poppert.

After I received Douglass' email, I called the NDCS Legal Division. I called to speak with Green, but he may have been unavailable when I called. I ended up speaking with Sharon Lindgren first. She had not seen the email. I was upset that Douglass misrepresented my position in her email to Green and Poppert. I stated to Lindgren that I did not agree with Douglass that NDCS should continue a sentence calculation method that was inconsistent with the *Castillas* decision. I believe that Lindgren said something similar to, "Yeah, we know you wouldn't say that."

I also spoke with Green over the phone about the *Castillas* decision. I do not recall the date, but it was when the case was still fresh. I do not have a complete recollection of my call with Green, but I know that we talked about the *Castillas* case. I made Green aware of the decision and what it was. I believe that Green understood the impact of the *Castillas* case, particularly in light of Douglass' email noting NDCS was not calculating mandatory release dates in the manner set forth by the Court. I believe it was clear to Green that I did not agree with Douglass that NDCS should continue a practice different from that outlined by the Court in the *Castillas* case.

After speaking with Green and Lindgren, I took no further action with regard to the *Castillas* case. I knew all of the attorneys at NDCS were very competent attorneys and I expected that they would evaluate the impact of the *Castillas* case and would take all appropriate action within the Department,

It was not my role to advise the NDCS Records Division directly to change its calculation methods especially when Ms. Douglass believed she had contrary directions from her employer. I knew George Green in DCS legal, through Douglass' email with a copy of the decision and through telephone conversations, was aware of the *Castillas* decision, what it meant and was aware NDCS was using a calculation method different from that provided by the Court. I do not believe I had any other obligations in this situation.

I have no additional information I would like to offer in this statement.

The statement provided above was voluntary. I had the opportunity to make changes to the statement before signing.

By signing this statement, I agree the contents are true and correct.


Linda L. Willard


Date