

Department of Correctional Services
Special Investigative Committee of the Legislature

Senators:

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Les Seiler -- Vice-chair
Kate Bolz
Ernie Chambers
Bob Krist
Heath Mello
Paul Schumacher

Hearing date: 10/10/2014

Testifiers:

Jerall Moreland
James Davis
Larry Wayne
Mikc Kenney

Westlaw.

766 N.W.2d 94
 277 Neb. 907, 766 N.W.2d 94
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Supreme Court of Nebraska.
 David J. ANDERSON, appellee,
 v.

Robert HOUSTON, director, Nebraska Department of Correctional Services, appellant.

No. S-08-954.
 June 5, 2009.

Background: Inmate filed petition for writ of habeas corpus requesting sentence credit for time he spent at liberty after the Department of Correctional Services mistakenly released him long before his sentences were to expire. The District Court, Douglas County, ██████████ granted writ. Department appealed and filed petition to bypass the Court of Appeals. The Supreme Court, 274 Neb. 916, 744 N.W.2d 410, reversed and remanded. On remand, the District Court again granted writ and awarded inmate attorney fees and costs. Department appealed.

Holdings: The Supreme Court, Stephan, J., held that:

- (1) trial court, on remand, properly declined to consider evidence presented by Department that inmate, while free, had committed traffic-related offenses;
- (2) trial court's finding that inmate had made reasonable attempt to inform prison authorities of their mistake in prematurely releasing him was not clearly erroneous; and
- (3) award of attorney fees to inmate was not justified.

Affirmed in part; reversed and vacated in part.

West Headnotes

[1] Habeas Corpus 197 ↪ 842

197 Habeas Corpus

197III Jurisdiction, Proceedings, and Relief

197III(D) Review

197III(D)2 Scope and Standards of Review

197k842 k. Review De Novo. Most Cited Cases

Habeas Corpus 197 ↪ 846

197 Habeas Corpus

197III Jurisdiction, Proceedings, and Relief

197III(D) Review

197III(D)2 Scope and Standards of Review

197k846 k. Clear Error. Most Cited Cases

On appeal of a habeas corpus petition, an appellate court reviews the trial court's factual findings for clear error and its conclusions of law de novo.

[2] Criminal Law 110 ↪ 1134.27

110 Criminal Law

110XXIV Review

110XXIV(L) Scope of Review in General

110XXIV(L)4 Scope of Inquiry

110k1134.27 k. In General. Most Cited Cases

The construction of a mandate issued by an appellate court presents a question of law.

[3] Criminal Law 110 ↪ 1134.27

110 Criminal Law

110XXIV Review

110XXIV(L) Scope of Review in General

110XXIV(L)4 Scope of Inquiry

110k1134.27 k. In General. Most Cited Cases

An appellate court reviews questions of law independently of the lower court's conclusion.

[4] Habeas Corpus 197 ↪ 864(5)

197 Habeas Corpus

197III Jurisdiction, Proceedings, and Relief

197III(D) Review

197III(D)3 Determination and Disposition

197k862 Remand

197k864 Criminal Cases

197k864(5) k. Sentence and Punishment. Most Cited Cases

Trial court, on remand from Supreme Court following reversal of grant of writ of habeas corpus to inmate requesting sentence credit for time he spent at liberty after Department of Correctional Services mistakenly released him before his sentences were to expire, properly declined to consider evidence presented by Department that inmate, while free, had committed traffic-related offenses, as Supreme Court's mandate in remanding case was for trial court to determine only whether inmate tried to inform officials of their mistake and, if not, whether defendant reasonably did not know his sentence was set to expire.

[5] Criminal Law 110 ↪ 1192

110 Criminal Law

110XXIV Review

110XXIV(U) Determination and Disposition of Cause

110k1192 k. Mandate and Proceedings in Lower Court. Most Cited Cases

Where an appellate court reverses and remands a cause to the district court for a special purpose, on remand, the district court has no power or jurisdiction to do anything except to proceed in accordance with the mandate.

[6] Criminal Law 110 ↪ 1192

110 Criminal Law110XXIV Review110XXIV(U) Determination and Disposition of Cause110k1192 k. Mandate and Proceedings in Lower Court. Most Cited Cases

A trial court is without power to affect rights and duties outside the scope of the remand from an appellate court.

[7] Habeas Corpus 197 ↪ 510(2)197 Habeas Corpus197II Grounds for Relief; Illegality of Restraint197II(B) Particular Defects and Authority for Detention in General197k503 Judgment, Sentence, or Order197k510 Computation197k510(2) k. Credits. Most Cited Cases

Trial court's finding that inmate had made reasonable attempt to inform prison authorities of their mistake in prematurely releasing him was not clearly erroneous, such that equitable doctrine of credit toward a sentence for time spent at liberty following a mistaken release from imprisonment applied, entitling inmate to habeas relief in form of sentence credit for time inmate was mistakenly at liberty; inmate, after being informed of his imminent release, questioned various prison officials in an attempt to clarify the circumstances of his release, inmate asked officer to "call down to make sure" that release was correct, and inmate told prison official that he had been sentenced to three to five years, and also asked this official to verify that release was correct.

[8] Habeas Corpus 197 ↪ 846197 Habeas Corpus197III Jurisdiction, Proceedings, and Relief197III(D) Review197III(D)2 Scope and Standards of Review197k846 k. Clear Error. Most Cited Cases

In a habeas corpus action, Supreme Court reviews a district court's finding of fact for clear error.

[9] Habeas Corpus 197 ↪ 864(5)197 Habeas Corpus197III Jurisdiction, Proceedings, and Relief197III(D) Review197III(D)3 Determination and Disposition197k862 Remand197k864 Criminal Cases197k864(5) k. Sentence and Punishment. Most Cited Cases

Resolution of issue of whether trial court, on remand from Supreme Court following reversal of grant of writ of habeas corpus to inmate requesting sentence credit for time he spent at liberty after Department of Correctional Services mistakenly released him before his sentences were to expire, erred in imputing errors committed by county to Department of Correctional Services and the state was outside scope of remand, as Supreme Court's mandate in remanding case was for trial court to determine only whether inmate tried to inform officials of their mistake and, if not, whether defendant reasonably did not know his sentence was set to expire.

[10] Habeas Corpus 197 ↪ 883.1

197 Habeas Corpus197III Jurisdiction, Proceedings, and Relief197III(E) Costs197k883 Indigent Petitioners197k883.1 k. In General. Most Cited Cases

Award of attorney fees to inmate, to whom trial court had granted habeas relief in form of credit for time he spent at liberty after he was mistakenly released from custody before completion of his criminal sentences, was not justified, as inmate was not entitled to counsel at public expense as a matter of due process as basis for taxation of inmate's attorney fees as costs, and although statute authorized award of costs in habeas corpus action, inmate proceeded in forma pauperis throughout the action, and, thus, he did not pay costs of action. U.S.C.A. Const. Amend. 14; West's Neb. Rev. St. § 29-2819.

111 Costs 102 ↪ 194.16102 Costs102VIII Attorney Fees102k 194.16 k. American Rule; Necessity of Contractual or Statutory Authorization or Grounds in Equity. Most Cited Cases

As a general rule, attorney fees and expenses may be recovered in a civil action only where provided for by statute or when a recognized and accepted uniform course of procedure has been to allow recovery of attorney fees.

***96 Syllabus by the Court*

*907 1. **Habeas Corpus: Appeal and Error.** On appeal of a habeas corpus petition, an appellate court reviews the trial court's factual findings for clear error and its conclusions of law de novo.

2. **Appeal and Error.** The construction of a mandate issued by an appellate court presents a question of law.

3. **Judgments: Appeal and Error.** An appellate court reviews questions of law independently of the lower court's conclusion.

4. **Courts: Appeal and Error.** Where an appellate court reverses and remands a cause to the district court for a special purpose, on remand, the district court has no power or jurisdiction to do anything except to proceed in accordance with the mandate.

5. **Courts: Appeal and Error.** A trial court is without power to affect rights and duties outside the scope of the remand from an appellate court.

*908 6. **Attorney Fees.** As a general rule, attorney fees and expenses may be recovered in a Nebraska civil action only where provided for by statute or when a recognized and accepted uniform course of procedure has been to allow recovery of attorney fees.

Jon Bruning, Attorney General, and Ryan C. Gilbride for appellant.

Michael D. Nelson and Cathy R. Saathoff, of Nelson Law, L.L.C., Omaha, for appellee.

HEAVICAN, C.J., WRIGHT, CONNOLLY, GERRARD, STEPHAN, McCORMACK, and MILLER-LERMAN, JJ.

STEPHAN, J.

This habeas corpus proceeding is before us for the second time. David J. Anderson seeks credit for time he spent at liberty after he was mistakenly released from custody before the completion of his criminal sentences. The district court for Douglas County initially granted the relief sought by Anderson. Robert Houston, the director of the Nebraska Department of Correctional Services (the Department), appealed. In Anderson v. Houston (Anderson I),^{FNI} we

recognized the equitable doctrine of credit toward a sentence for **97 time spent at liberty following a mistaken release from imprisonment, but determined that additional factual findings were necessary to determine whether Anderson was entitled to such relief. We therefore reversed, and remanded to the district court with instructions to make specific findings. On remand, the court conducted a second evidentiary hearing, made the findings required by our mandate, and again concluded that Anderson was entitled to the relief he sought. The district court also awarded Anderson attorney fees and costs. Houston, on behalf of the Department, perfected this timely appeal. We affirm the determination of the district court that Anderson is entitled to credit against his sentence for the *909 time he spent at liberty, but we reverse the award of attorney fees and costs.

FN1, *Anderson v. Houston*, 274 Neb. 916, 744 N.W.2d 410 (2008).

I. BACKGROUND

1. BASIC FACTS

We summarize the basic, undisputed facts which are set forth in more detail in *Anderson I*. Anderson was convicted in Douglas County District Court of a Class III felony, theft by unlawful taking, and a Class IV felony, theft by unlawful taking. On April 2, 2003, the court sentenced Anderson to 3 to 5 years' imprisonment for the Class III felony and 20 months' to 5 years' imprisonment for the Class IV felony. The court ordered the sentences to run concurrently.

On July 8, 2003, the Department mistakenly released Anderson from incarceration. The Department eventually discovered its mistake and, on September 16, filed a motion for *capias* and notice of hearing in the Douglas County District Court. Anderson did not appear at the hearing scheduled for September 24. That same day, the district court issued an order directing any law enforcement officers to arrest Anderson if they located him. The clerk's office did not issue that warrant for approximately 14 months.

In the interim, however, Douglas County filed a motion for declaration of forfeiture of Anderson's bail bond because Anderson failed to appear at the September 24, 2003, hearing. This motion, which was filed on March 17, 2004, and an accompanying letter were mailed to Anderson at an address specified in the certificate of service. On March 26, the court entered a default judgment forfeiting Anderson's bond.

On January 3, 2005, a little more than 9 months after the bond forfeiture proceeding, police arrested Anderson during a routine traffic stop. Anderson was then returned to the Nebraska State Penitentiary in Lancaster County. After accounting for the time Anderson was absent from prison, the Department found that his recalculated parole eligibility date was January 9, 2006, and that his new mandatory release date was January 9, 2007. After his reincarceration, Anderson commenced this habeas corpus proceeding and obtained the order which we reviewed in *Anderson I*.

*910 2. *ANDERSON I*

In resolving the first appeal, we recognized the equitable principle that a prisoner can be granted credit against a sentence for time during which the prisoner is erroneously at liberty. We also recognized that no equitable relief is required where a prisoner causes his or her own premature release from prison, thwarts governmental attempts at recapture, or misbehaves while at liberty. We held that prisoners who are aware of an erroneous release from confinement but make no effort to correct it are not entitled to equitable relief. Specifically, we stated:

To preserve the right to credit for time spent at liberty, a prisoner who knows his or her release is erroneous **98 must make a reasonable attempt to notify authorities of the mistake. Although the prisoner need not "continue to badger the authorities," a reasonable attempt may well include voicing an objection at the time of release or contacting authorities a short time later in order to clarify his or her status.^{FN2}

FN2, *Id.* at 931, 744 N.W.2d at 422, quoting *United States v. Merritt*, 478 F.Supp. 804 (D.D.C.1979).

We further held that the prisoner "carries the burden to show that the complexity in calculating his or her release date, or some cognitive deficiency, prevented him or her from realizing the release was premature."^{FN3}

FN3. *Id.* at 932, 744 N.W.2d at 423.

We concluded that although the district court had specifically found that Anderson did not cause his premature release and there was no evidence before us that Anderson had committed any crimes while he was erroneously at liberty, there was an unresolved question as to whether Anderson knew that his release was premature, yet remained silent. Accordingly, we remanded to the district court for a determination of "whether Anderson tried to inform officials of their mistake and, if not, whether Anderson reasonably did not know his sentence was set to expire." FN4 We further directed the district court to determine whether Anderson had or should have had notice of the *911 September 24, 2003, hearing on the Department's motion for *capias* and/or Douglas County's motion to declare a forfeiture of his bond. We also directed the parties to present evidence as to why the arrest warrant for Anderson was not issued immediately after it was authorized by the district judge on September 24, and we noted that the district court should determine whether the delay was "part of an organized and diligent plan to notify, find, and reaprehend Anderson, or was instead the product of misconduct—negligent or affirmative—by public officials." FN5 Finally, we directed the district court to determine the impact of any delay due to misconduct on the equities of denying Anderson credit for any or all of the 14-month period between the authorization and issuance of the arrest warrant. We wrote that "this equitable analysis should be conducted in a manner consistent with the rationale and policies expressed in this opinion." FN6 Accordingly, our mandate reversed the judgment of the district court and remanded the cause for further proceedings.

FN4. *Id.*

FN5. *Id.* at 933, 744 N.W.2d at 423-24.

FN6. *Id.* at 933, 744 N.W.2d at 424.

3. PROCEEDINGS FOLLOWING REMAND

(a) Evidence

Anderson testified in person at the hearing following remand, and his deposition was received in evidence. According to the April 2, 2003, sentencing order, Anderson received credit for 76 days served in custody prior to sentencing. His two Nebraska sentences of 3 to 5 years' imprisonment and 20 months' to 5 years' imprisonment were ordered to run concurrently with each other and with "incarceration ordered in Iowa." The record does not reflect the term of the Iowa sentence. Anderson denied receiving any documents reflecting his Nebraska sentences or Iowa sentence, but he admitted that he was generally aware that he was to serve 3 to 5 years' imprisonment on his Nebraska sentences.

Anderson began serving his Iowa sentence sometime in 2002. In June 2003, he completed his Iowa sentence and was **99 transported from Iowa to the Douglas County Correctional *912 Center (DCCC). On July 8, 2003, after he had been at DCCC for approximately 3 weeks, Anderson was informed by a guard that he would be released if he paid an outstanding \$300 fine. In his deposition, Anderson testified that he thought he still had Nebraska prison time remaining, so he asked an officer to verify the information. The officer "called downstairs to booking" and again told Anderson that he would be released if he paid the fine. Anderson further testified in his deposition that he informed the captain on the floor at DCCC that he had been sentenced to 3 to 5 years' imprisonment. The captain took Anderson to his office and showed him a computer entry indicating that only the fine was pending. Anderson paid the fine and was released on July 8.

Anderson's wife testified that when she learned of his impending release in July 2003, she was uncertain whether he had completed his sentence and she called DCCC several times to request verification. Each time, she was told that he would be released upon payment of the \$300 fine. During her last call, she was told to "quit calling," so she did.

The correctional officer who processed Anderson's release on July 8, 2003, testified that he found no indication in the records that Anderson informed him that the release was erroneous. He testified that if a prisoner were to question an impending release, he would confirm the prisoner's status before completing the release. However, he admitted that he had no independent recollection of Anderson or the circumstances of his release.

Anderson testified that he did not receive notice of the motion for *capias* and notice of hearing filed on September

16, 2003, and that he did not reside at the address reflected on the certificate of service. Employees of the clerk of the district court testified that the 14-month delay in issuing the arrest warrant which was authorized on September 24, 2003, was the result of "human error." They acknowledged that Anderson was not responsible for the delay.

Anderson testified that he did not receive notice of the motion to declare a forfeiture of his bond filed on March 17, 2004, and that he did not reside at the address reflected on the certificate of service.

*913 (b) Findings

Although the district court received over objection evidence of certain traffic-related offenses committed by Anderson after his release from incarceration in 2003, it subsequently concluded that it could not consider this evidence under the scope of our mandate in Anderson I.

The district court found that although Anderson was not aware of his actual release date, there was sufficient evidence that he questioned various prison officials in an attempt to clarify his status when told that he would be released in July 2003. The court also found that Anderson had carried his burden of demonstrating the complexity of calculating his original release date. The court further found that due to deficiencies in the notices, there was no evidence that Anderson knew or should have known about either the September 24, 2003, hearing on the motion for *capias* or the bond forfeiture hearing in March 2004. Finally, the district court found that the delay in the issuance of the arrest warrant was caused by the negligence of the State and that while such negligence did not amount to an affirmative act of misconduct, Anderson should not "bear the brunt of the State's negligence."

**100 Based upon these findings, the district court determined that Anderson was entitled to "day for day credit for the one year, 5 months and 25 days he spent at liberty after he was mistakenly released by the ... Department." The court also awarded Anderson attorney fees and costs.

II. ASSIGNMENTS OF ERROR

The Department assigns that the district court erred in (1) "failing to follow the rationale and policies of the Nebraska Supreme Court on remand," (2) imputing errors committed by Douglas County to the Department and the State of Nebraska, and (3) awarding attorney fees and costs to Anderson.

III. STANDARD OF REVIEW

[1] On appeal of a habeas corpus petition, an appellate court reviews the trial court's factual findings for clear error and its conclusions of law de novo.^{FN7}

^{FN7} Anderson I, supra note 1.

*914 [2][3] The construction of a mandate issued by an appellate court presents a question of law.^{FN8} An appellate court reviews questions of law independently of the lower court's conclusion.^{FN9}

^{FN8} County of Sarpy v. City of Gretna, 276 Neb. 520, 755 N.W.2d 376 (2008); Pennfield Oil Co. v. Winstrom, 276 Neb. 123, 752 N.W.2d 588 (2008).

^{FN9} County of Hitchcock v. Barger, 275 Neb. 872, 750 N.W.2d 357 (2008).

IV. ANALYSIS

1. ISSUES AND FINDINGS ON REMAND

The Department's first assignment of error is very broad. We limit our discussion to the arguments asserted in the Department's brief, and thus consider whether the district court erred either in defining the scope of the remand or in making its factual findings on remand.^{FN10}

^{FN10} See, Walsh v. State, 276 Neb. 1034, 759 N.W.2d 100 (2009); Malchow v. Doyle, 275 Neb. 530, 748 N.W.2d 28 (2008).

(a) Scope

[4] The Department contends that the district court erred in concluding that it could not consider traffic-related offenses committed by Anderson while at liberty under the scope of our mandate in *Anderson I*. The Department construes the mandate as requiring the district court to conduct “a full-blown evidentiary hearing in order to gather sufficient evidence to determine whether the newly articulated equitable doctrine of sentence credit for time spent at liberty applies.” ^{FN11}

^{FN11}. Brief for appellant at 9.

We do not interpret the scope of the mandate to be so broad. In *Anderson I*, we specifically noted that there was no “evidence that Anderson committed any crimes while he was erroneously at liberty.” ^{FN12} We remanded the cause for the trial court to determine only “whether Anderson tried to inform officials of their mistake and, if not, whether Anderson reasonably did not know his sentence was set to expire.” ^{FN13} While we noted that the “equitable analysis should be conducted in a manner *915 consistent with the rationale and policies expressed in this opinion,” ^{FN14} this modifying sentence applied only to the specific issues upon which the remand was based.

^{FN12}. *Anderson I, supra* note 1, 274 Neb. at 928, 744 N.W.2d at 421.

^{FN13}. *Id.* at 932, 744 N.W.2d at 423.

^{FN14}. *Id.* at 933, 744 N.W.2d at 424.

[5][6] Where an appellate court reverses and remands a cause to the district **101 court for a special purpose, on remand, the district court has no power or jurisdiction to do anything except to proceed in accordance with the mandate.^{FN15} A trial court is without power to affect rights and duties outside the scope of the remand from an appellate court.^{FN16} Because the issues on remand did not include Anderson's conduct while at liberty, the district court properly declined to consider the Department's evidence in this regard.

^{FN15}. *VanHorn v. Nebraska State Racing Comm.*, 273 Neb. 737, 732 N.W.2d 651 (2007); *State ex rel. Hill Truck Line v. Jensen*, 218 Neb. 591, 357 N.W.2d 455 (1984).

^{FN16}. *Id.*

(b) Factual Findings

[7][8] The Department contends the district court erred in concluding both that Anderson tried to inform officials of their mistake and that Anderson legitimately did not know when his sentence was set to expire. In a habeas corpus action, we review a district court's finding of fact for clear error.^{FN17}

^{FN17}. *Anderson I, supra* note 1.

The district court found that after being informed of his imminent release, Anderson “questioned various prison officials in an attempt to clarify the circumstances of his release.” Anderson had an officer “call down to make sure” that the release was correct. The court also specifically found that Anderson told a DCCC captain that “he had been sentenced to 3–5 years,” and also asked this captain to verify that the release was correct. The court concluded that these attempts to inform authorities the release was a mistake were reasonable and that Anderson thus was entitled to equitable relief. Based upon our review of the record, we conclude that the district court's factual finding that Anderson made a reasonable attempt to inform authorities of their mistake was not clearly erroneous.

*916 We stated in *Anderson I* that if the district court determined that Anderson did not try to inform officials of a possible mistake regarding his release date, it should determine whether he reasonably did not know that his release was premature. Because we affirm the finding that Anderson actually did inform officials of what he perceived as a

possible error regarding his release date, we need not address the question of whether he should have been able to precisely calculate his actual release date. We are satisfied by the record that this was not a case of "informed silence." Whether or not Anderson knew his precise release date, the record establishes that he questioned the July 2003 release and called the matter to the attention of corrections officials in order to clarify his status prior to his release. The district court correctly determined that the error in releasing Anderson prematurely was attributable solely to governmental officials, under the equitable principles established in Anderson I.

2. IMPUTING COUNTY ERRORS TO STATE

[9] In its second assignment of error, the Department argues that the district court erred in imputing errors committed by Douglas County to the Department and the State of Nebraska in conducting the equitable analysis. Notably, this issue was not raised when this case was originally presented to this court.^{FN18} Nor was it raised to the district court after remand. And in any event, resolution of this issue is outside the scope of the remand for the same reason that resolution of the issue of Anderson's conduct while at liberty is outside**102 the scope of the remand. This assignment of error is without merit.

FN18. See *id.*

3. ATTORNEY FEES AND COSTS

At the hearing on remand, Anderson's counsel orally moved for an award of attorney fees and was granted leave to file an affidavit and supporting evidence on the issue. Counsel subsequently filed an affidavit and supporting documents, which showed attorney fees and expenses in the amount of \$19,178.10. The affidavit did not request fees pursuant to any *917 particular statute, but instead simply noted that the fees and expenses were "fair, reasonable, and necessary with regard to the representation" of Anderson. In its final order, the district court, citing Neb.Rev.Stat. § 29-2819 (Reissue 1995), awarded "Anderson's counsel" \$15,342.50 in fees and costs. The Department argues that the award was erroneous.

[10][11] Section 29-2819 authorizes a court in a habeas corpus action to "make such order as to costs as the case may require." As a general rule, attorney fees and expenses may be recovered in a Nebraska civil action only where provided for by statute or when a recognized and accepted uniform course of procedure has been to allow recovery of attorney fees.^{FN19} Other jurisdictions apply a similar standard regarding the recovery of fees in habeas corpus actions.^{FN20} Neb.Rev.Stat. § 29-2824 (Reissue 2008) specifies various fees which can be taxed as costs in a habeas corpus proceeding, but there is no provision for an award of attorney fees.^{FN21} No other statute specifically provides for the recovery of attorney fees in a habeas action, nor is there any recognized and accepted uniform course of procedure that allows the recovery of attorney fees in a habeas action.^{FN22}

FN19. Young v. Midwest Fam. Mut. Ins. Co., 276 Neb. 206, 753 N.W.2d 778 (2008).

FN20. See 39A C.J.S. Habeas Corpus § 377 (2003).

FN21. See, In re Application of Ghowrwal, 207 Neb. 831, 301 N.W.2d 349 (1981); State v. Konvalin, 181 Neb. 554, 149 N.W.2d 755 (1967).

FN22. See *id.*

Anderson argues that he was entitled to counsel at public expense as a matter of due process, in that he was at risk of returning to prison if not successful in this action. He relies upon Carroll v. Moore,^{FN23} holding that due process requires that an indigent defendant in a paternity proceeding be furnished appointed counsel at public expense, and Allen v. Sheriff of Lancaster Cty.^{FN24} holding that an indigent party facing incarceration for noncompliance with a purge plan in a civil contempt proceeding is entitled to appointed counsel. But the additional *918 incarceration which

Anderson faced if unsuccessful in this action was no more than that to which he was sentenced in a criminal proceeding in which he was represented by counsel and afforded due process. The issue in this civil proceeding is whether he should be relieved of a portion of that sentence on equitable grounds stemming from the State's error in releasing him prematurely. On these facts, we do not recognize a constitutional basis for taxation of Anderson's attorney fees as costs, and we conclude that the court erred in doing so. And, although § 29-2819 authorizes an award of costs in a habeas corpus action, Anderson proceeded in forma pauperis throughout this action. He therefore did ****103** not pay the costs of this action and is not entitled to recover them. FN25

FN23, *Carroll v. Moore*, 228 Neb. 561, 423 N.W.2d 757 (1988).

FN24, *Allen v. Sheriff of Lancaster Cty.*, 245 Neb. 149, 511 N.W.2d 125 (1994).

FN25. See *Neb.Rev.Stat. §§ 25-2301 to 25-2309* (Reissue 2008).

V. CONCLUSION

For the reasons discussed, we conclude that the district court did not err in granting Anderson credit against his sentence for the 1 year, 5 months, and 25 days he spent at liberty as a result of his erroneous release from incarceration on July 8, 2003. However, we reverse and vacate the award of attorney fees and costs, because there is no legal basis upon which Anderson may recover his attorney fees in this action and he has not paid any costs. For the same reason, we overrule Anderson's motion for attorney fees filed in this court.

AFFIRMED IN PART, AND IN PART REVERSED AND VACATED.

Neb.,2009.
Anderson v. Houston
277 Neb. 907, 766 N.W.2d 94

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 [West Reporter Image \(PDF\)](#)

274 Neb. 916, 744 N.W.2d 410

[Briefs and Other Related Documents](#)
[Judges and Attorneys](#)

Supreme Court of Nebraska,
David J. ANDERSON, appellee,
v.
Robert HOUSTON, director, Nebraska Department of Correctional Services, appellant.

Nos. S-05-1561, S-06-206.
Feb. 1, 2008.

Background: Inmate filed petition for writ of habeas corpus requesting sentence credit for time he spent at liberty after the Department of Correctional Services mistakenly released him long before his sentences were to expire. The District Court, Douglas County, Marlon A. Polk, J., granted writ and Inmate's request that Department pay court costs. Department appealed and filed petition to bypass the Court of Appeals.

Holdings: The Supreme Court, Heavican, C.J., held that:

- (1) on appeal of a habeas petition, an appellate court reviews the trial court's factual findings for clear error and its conclusions of law de novo;
- (2) district court had jurisdiction to review habeas petition, even though it was not in county in which inmate was confined;
- (3) prematurely released prisoners who had knowledge of a governmental mistake and yet made no effort to correct it do not deserve sentence credit under the equitable doctrine;
- (4) a prisoner who does not try to inform officials that his release was premature carries the burden to show that the complexity in calculating his or her release date, or some cognitive deficiency, prevented him or her from realizing the release was premature;
- (5) remand was necessary for the trial court to determine whether inmate tried to inform officials of their mistake and, if not, whether inmate reasonably did not know his release was premature;
- (6) district court lacked jurisdiction when it issued order granting inmate's request for payment of court costs; and
- (7) an order granting habeas relief qualifies as a final order for purposes of an appeal.

Judgment granting writ reversed, and cause remanded; judgment granting request for costs vacated.

Connolly and Gerrard, JJ., concurred in result.

Wright, J., concurred and filed opinion.

West Headnotes

[1]  [KeyCite Citing References for this Headnote](#)

110 Criminal Law

· [110XXIV Review](#)

· [110XXIV\(L\) Scope of Review In General](#)

· [110XXIV\(L\)4 Scope of Inquiry](#)

· [110k1134.39 k, Jurisdiction and venue. Most Cited Cases](#)
(Formerly 110k1134(3))

A jurisdictional question that does not involve a factual dispute is determined by an appellate court as a matter of law, which requires the appellate court to reach a conclusion independent of the lower court's decision.

[2] KeyCite Citing References for this Headnote

- 197 Habeas Corpus
 - 197III Jurisdiction, Proceedings, and Relief
 - 197III(D) Review
 - 197III(D)2 Scope and Standards of Review
 - 197k842 k. Review de novo. Most Cited Cases

- 197 Habeas Corpus KeyCite Citing References for this Headnote
 - 197III Jurisdiction, Proceedings, and Relief
 - 197III(D) Review
 - 197III(D)2 Scope and Standards of Review
 - 197k846 k. Clear error. Most Cited Cases

On appeal of a habeas petition, an appellate court reviews the trial court's factual findings for clear error and its conclusions of law de novo.

[3] KeyCite Citing References for this Headnote

- 197 Habeas Corpus
 - 197III Jurisdiction, Proceedings, and Relief
 - 197III(B) Jurisdiction and Venue
 - 197III(B)2 Personal Jurisdiction and Venue
 - 197k634 k. State or territorial courts. Most Cited Cases

District court in which inmate filed his habeas petition had jurisdiction to review petition, even though court was not in county in which inmate was confined; Department of Correctional Services submitted to the court's "jurisdiction" at the initial hearing by failing to object to venue, and inmate was later transferred to correctional center in same county as district court.

[4] KeyCite Citing References for this Headnote

- 110 Criminal Law
 - 110XXIV Review
 - 110XXIV(B) Nature and Grounds of Appellate Jurisdiction
 - 110k1016 Appellate Jurisdiction
 - 110k1017 k. In general. Most Cited Cases

If the court from which an appeal was taken lacked jurisdiction, the appellate court acquires no jurisdiction.

[5] KeyCite Citing References for this Headnote

- 106 Courts
 - 106I Nature, Extent, and Exercise of Jurisdiction In General
 - 106I(A) In General
 - 106k22 Consent of Parties as to Jurisdiction
 - 106k24 k. Of cause of action or subject-matter. Most Cited Cases

Litigants can not confer subject matter jurisdiction upon a tribunal by acquiescence or consent.

[6] KeyCite Citing References for this Headnote

- 110 Criminal Law
- 110IX Venue
- 110IX(C) Objections and Exceptions
- 110k145 k. In general. Most Cited Cases

Venue provisions confer a personal privilege which may be waived by the defendant.

[7] KeyCite Citing References for this Headnote

- 197 Habeas Corpus
- 197III Jurisdiction, Proceedings, and Relief
- 197III(B) Jurisdiction and Venue
- 197III(B)1 In General
- 197k612 State Courts; Judges, or Officers
- 197k612.1 k. In general. Most Cited Cases

Any and all district courts have subject matter jurisdiction over habeas claims. Neb.Rev.St. § 29-2801.

[8] KeyCite Citing References for this Headnote

- 197 Habeas Corpus
- 197III Jurisdiction, Proceedings, and Relief
- 197III(B) Jurisdiction and Venue
- 197III(B)2 Personal Jurisdiction and Venue
- 197k634 k. State or territorial courts. Most Cited Cases

An application for a writ of habeas corpus to release a prisoner confined under sentence of court must be brought in the county where the prisoner is confined.

[9] KeyCite Citing References for this Headnote

- 197 Habeas Corpus
- 197III Jurisdiction, Proceedings, and Relief
- 197III(C) Proceedings
- 197III(C)1 In General
- 197k691 Dismissal
- 197k691.1 k. In general. Most Cited Cases

Where habeas proceedings are instituted in a county other than the one in which prisoner is confined, it is the duty of the court, on objection to its jurisdiction, to dismiss the proceedings.

[10] KeyCite Citing References for this Headnote

- 197 Habeas Corpus
- 197III Jurisdiction, Proceedings, and Relief
- 197III(B) Jurisdiction and Venue
- 197III(B)3 Waiver and Transfer
- 197k651 k. Waiver of objections. Most Cited Cases

Where application is made for a writ of habeas corpus to the district court of a county other than that in which the prisoner is confined, and the officer in whose custody the prisoner is held brings the latter into court and submits to the jurisdiction without objection, the prisoner is then under confinement in the county where the action is brought, and the court has authority to inquire into the legality of his restraint.

[11] KeyCite Citing References for this Headnote

- 197 Habeas Corpus
 - 197I In General
 - 197I(A) In General
 - 197I(A)1 Nature of Remedy In General
 - 197k206 Purpose and Use of Writ
 - 197k207 k. Release from restraint. Most Cited Cases

The habeas corpus writ provides illegally detained prisoners with a mechanism for challenging the legality of a custodial deprivation of liberty.

[12] KeyCite Citing References for this Headnote

- 197 Habeas Corpus
 - 197II Grounds for Relief; Illegality of Restraint
 - 197II(A) Ground and Nature of Restraint
 - 197k441 k. Improper restraint or detention In general. Most Cited Cases

To secure habeas corpus relief, the prisoner must show that he or she is being illegally detained and is entitled to the benefits of the writ.

[13] KeyCite Citing References for this Headnote

- 350H Sentencing and Punishment
 - 350HV Sufficiency and Construction of Sentence Imposed
 - 350HV(D) Credits
 - 350Hk1164 Release
 - 350Hk1169 k. Erroneous release. Most Cited Cases

Sentence credit for time erroneously spent at liberty is a common-law doctrine rooted in equity and is often called the "equitable doctrine."

[14] KeyCite Citing References for this Headnote

- 350H Sentencing and Punishment
 - 350HV Sufficiency and Construction of Sentence Imposed
 - 350HV(D) Credits
 - 350Hk1164 Release
 - 350Hk1169 k. Erroneous release. Most Cited Cases

A prisoner is eligible for sentence credit under the equitable doctrine when his premature release is due to simple negligence by officials.

[15] KeyCite Citing References for this Headnote

- 92 Constitutional Law
 - 92XXVII Due Process

92XXVII(H) Criminal Law92XXVII(H)11 Imprisonment and Incidents Thereof

- 92k4830 k. Discharge and release. Most Cited Cases

- 310 Prisons KeyCite Citing References for this Headnote

- 310II Prisoners and Inmates

- 310II(F) Duration of Confinement

- 310k241 k. Discharge and release in general. Most Cited Cases
(Formerly 310k14)

Department of Correctional Services did not commit misconduct rising to the level of a due process violation when it mistakenly prematurely released prisoner from incarceration. U.S.C.A. Const. Amend. 14.

[16] KeyCite Citing References for this Headnote

350H Sentencing and Punishment

- 350HV Sufficiency and Construction of Sentence Imposed

- 350HV(D) Credits

- 350Hk1164 Release

- 350Hk1169 k. Erroneous release. Most Cited Cases

Sentence credit for time erroneously at liberty is an equitable doctrine and should be applied only where equity demands its application.

[17] KeyCite Citing References for this Headnote

350H Sentencing and Punishment

- 350HV Sufficiency and Construction of Sentence Imposed

- 350HV(D) Credits

- 350Hk1164 Release

- 350Hk1169 k. Erroneous release. Most Cited Cases

Two rights are served by the equitable doctrine providing sentence credit for time erroneously spent at liberty: the first right is society's right to expect that once a defendant has been incarcerated, the time will not be served in bits and pieces, and the second right is the right of a prisoner to pay his debt to society in one stretch, not in bits and pieces.

[18] KeyCite Citing References for this Headnote

350H Sentencing and Punishment

- 350HV Sufficiency and Construction of Sentence Imposed

- 350HV(D) Credits

- 350Hk1164 Release

- 350Hk1169 k. Erroneous release. Most Cited Cases

No equitable relief is required where a prisoner causes his or her own premature release from prison, thwarts governmental attempts at recapture, or misbehaves while at liberty.

[19] KeyCite Citing References for this Headnote

350H Sentencing and Punishment

- 350HV Sufficiency and Construction of Sentence Imposed

- 350HV(D) Credits

- 350Hk1164 Release
- 350Hk1169 k. Erroneous release. Most Cited Cases

Where it is clear that a prisoner had knowledge of a government mistake and made no effort to correct it, equity does not demand credit for time erroneously at liberty.

[20] KeyCite Citing References for this Headnote

- 350H Sentencing and Punishment
- 350HV Sufficiency and Construction of Sentence Imposed
- 350HV(D) Credits
- 350Hk1164 Release
- 350Hk1169 k. Erroneous release. Most Cited Cases

Prematurely released prisoners who had knowledge of a governmental mistake and yet made no effort to correct it—like prisoners who actively cause or prolong a premature release or commit crimes while at liberty—do not deserve sentence credit under the equitable doctrine.

[21] KeyCite Citing References for this Headnote

- 350H Sentencing and Punishment
- 350HV Sufficiency and Construction of Sentence Imposed
- 350HV(D) Credits
- 350Hk1164 Release
- 350Hk1169 k. Erroneous release. Most Cited Cases

To preserve the right to credit for time spent at liberty, a prisoner who knows his or her release is erroneous must make a reasonable attempt to notify authorities of the mistake.

[22] KeyCite Citing References for this Headnote

- 350H Sentencing and Punishment
- 350HV Sufficiency and Construction of Sentence Imposed
- 350HV(D) Credits
- 350Hk1164 Release
- 350Hk1169 k. Erroneous release. Most Cited Cases

Although a prisoner who knows his or her release is erroneous need not, in attempting to notify authorities of the mistake to preserve the right to credit for time spent at liberty, continue to badger the authorities, a reasonable attempt may well include voicing an objection at the time of release or contacting authorities a short time later in order to clarify his or her status.

[23] KeyCite Citing References for this Headnote

- 350H Sentencing and Punishment
- 350HV Sufficiency and Construction of Sentence Imposed
- 350HV(D) Credits
- 350Hk1164 Release
- 350Hk1169 k. Erroneous release. Most Cited Cases

A prisoner who seeks credit for time erroneously spent at liberty and who does not try to inform officials that his release was premature carries the burden to show that the complexity in calculating his or her release date, or some cognitive deficiency, prevented him or her from realizing the release was premature.

[24] KeyCite Citing References for this Headnote

- 350H Sentencing and Punishment
 - 350HV Sufficiency and Construction of Sentence Imposed
 - 350HV(D) Credits
 - 350Hk1164 Release
 - 350Hk1169 k. Erroneous release. Most Cited Cases

When a prisoner seeks credit for time erroneously spent at liberty but did not try to inform officials that his release was premature, the government has what essentially amounts to a burden of production to provide the prisoner, who carries the burden to show that the complexity in calculating his or her release date, or some cognitive deficiency, prevented him or her from realizing the release was premature, with any and all records relevant to inquiry; such records would include any copies of the original sentencing order, as well as any records related to earned release time, work release, commutations, and any other such materials.

[25] KeyCite Citing References for this Headnote

- 197 Habeas Corpus
 - 197III Jurisdiction, Proceedings, and Relief
 - 197III(D) Review
 - 197III(D)3 Determination and Disposition
 - 197k862 Remand
 - 197k864 Criminal Cases
 - 197k864(5) k. Sentence and punishment. Most Cited Cases

On appeal from grant of habeas relief to inmate who sought sentence credit for time erroneously spent at liberty under the equitable doctrine, remand was necessary for the trial court to determine whether inmate tried to inform officials of their mistake and, if not, whether inmate reasonably did not know his release was premature.

[26] KeyCite Citing References for this Headnote

- 197 Habeas Corpus
 - 197III Jurisdiction, Proceedings, and Relief
 - 197III(D) Review
 - 197III(D)1 In General
 - 197k821 Effect of Proceeding for Review; Stay
 - 197k821.1 k. In general. Most Cited Cases

District court was divested of jurisdiction when the Department of Correctional Services perfected its appeal of the district court's order granting inmate's petition for habeas relief, and thus district court lacked jurisdiction when it subsequently issued orders granting inmate's request for payment of court costs and motion to withdraw a prior request for legal fees.

[27] KeyCite Citing References for this Headnote

- 110 Criminal Law
 - 110XXIV Review
 - 110XXIV(F) Proceedings, Generally
 - 110k1083 k. Effect of transfer or proceedings therefor. Most Cited Cases

A trial court is divested of jurisdiction when a party perfects appeal of a final order.

[28] KeyCite Citing References for this Headnote

- 197 Habeas Corpus
- .. 197III Jurisdiction, Proceedings, and Relief
- 197III(D) Review
- 197III(D)1 In General
- 197k814 k. Decisions reviewable. Most Cited Cases

The test of finality for the purpose of an appeal in a habeas corpus proceeding is not necessarily whether the whole matter involved in the action is concluded, but whether the particular proceeding or action is terminated by the judgment.

[29] KeyCite Citing References for this Headnote

- 197 Habeas Corpus
- 197III Jurisdiction, Proceedings, and Relief
- 197III(D) Review
- 197III(D)1 In General
- 197k814 k. Decisions reviewable. Most Cited Cases

An order granting habeas relief qualifies as a final order for purposes of an appeal.

****413 Syllabus by the Court**

***916 1. Judgments: Jurisdiction: Appeal and Error.** A jurisdictional question that does not involve a factual dispute is determined by an appellate court as a matter of law, which requires the appellate court to reach a conclusion independent of the lower court's decision.

***917 2. Habeas Corpus: Appeal and Error.** On appeal of a habeas petition, an appellate court reviews the trial court's factual findings for clear error and its conclusions of law de novo.

3. Jurisdiction: Appeal and Error. If the court from which an appeal was taken lacked jurisdiction, the appellate court acquires no jurisdiction.

4. Jurisdiction: Venue: Waiver. Litigants cannot confer subject matter jurisdiction upon a tribunal by acquiescence or consent. In contrast, venue provisions confer a personal privilege which may be waived by the defendant.

5. Habeas Corpus. An application for habeas relief may be made to any one of the judges of the district court or to any county judge.

6. Habeas Corpus: Jurisdiction. An application for a writ of habeas corpus to release a prisoner confined under sentence of court must be brought in the county where the prisoner is confined. And where proceedings are instituted in another county, it is the duty of the court, on objection to its jurisdiction, to dismiss the proceedings.

7. Habeas Corpus: Jurisdiction. Where application is made for a writ of habeas corpus to the district court of a county other than that in which the prisoner is confined and the officer in whose custody the prisoner is held brings the latter into court and submits to the jurisdiction without objection, the prisoner is then under confinement in the county where the action is brought, and the court has authority to inquire into the legality of his or her restraint.

8. Habeas Corpus. The habeas corpus writ provides illegally detained prisoners with a mechanism for challenging the legality of a custodial deprivation of liberty.

9. **Habeas Corpus: Proof.** To secure habeas corpus relief, the prisoner must show that he or she is being illegally detained and is entitled to the benefits of the writ.

10. **Sentences: Equity.** Credit for time erroneously at liberty is an equitable doctrine and should be applied only where equity demands its application.

11. **Sentences: Equity.** No equitable relief is required where a prisoner causes his or her own premature release from prison, thwarts governmental attempts at recapture, or misbehaves while at liberty.

12. **Sentences: Equity.** Where it is clear that a prisoner had knowledge of a government mistake and made no effort to correct it, equity does not demand credit for time at liberty.

13. **Sentences: Equity.** Prisoners who had knowledge of a governmental mistake and yet made no effort to correct it—like prisoners who actively cause or prolong a premature release or commit crimes **414 while at liberty—do not deserve sentence credit under the equitable doctrine.

14. **Sentences: Notice.** To preserve the right to credit for time spent at liberty, a prisoner who knows his or her release is erroneous must make a reasonable attempt to notify authorities of the mistake.

15. **Sentences: Notice.** Although the prisoner need not continue to badger the authorities, a reasonable attempt may well include voicing an objection at the time of release or contacting authorities a short time later in order to clarify his or her status.

16. **Sentences: Proof.** The prisoner carries the burden to show that the complexity in calculating his or her release date, or some cognitive deficiency, prevented him or her from realizing the release was premature. The government has what essentially *918 amounts to a burden of production to provide the prisoner with any and all records relevant to this inquiry. Such records would include any copies of the original sentencing order, as well as any records related to earned release time, work release, commutations, and any other such materials.

17. **Jurisdiction: Final Orders: Appeal and Error.** A trial court is divested of jurisdiction when a party perfects appeal of a final order.

18. **Habeas Corpus: Final Orders: Proof.** The test of finality for the purpose of an appeal in a habeas corpus proceeding is not necessarily whether the whole matter involved in the action is concluded, but whether the particular proceeding or action is terminated by the judgment.

19. **Habeas Corpus: Final Orders.** An order denying habeas corpus relief qualifies as a final order.

20. **Habeas Corpus: Final Orders.** An order granting habeas corpus relief qualifies as a final order.

Jon Bruning, Attorney General, Kimberley Taylor-Riley, and Ryan Gilbride for appellant.

Michael D. Nelson and Cathy R. Saathoff, Omaha, of Nelson Law, L.L.C., and April L. O'Loughlin, of O'Loughlin Law, P.C., for appellee.

HEAVICAN, C.J., WRIGHT, CONNOLLY, GERRARD, STEPHAN, McCORMACK, and MILLER-LERMAN, JJ.

HEAVICAN, C.J.

I. INTRODUCTION

David J. Anderson, an inmate at the Nebraska State Penitentiary in Lancaster County, filed a writ of habeas corpus in the district court for Douglas County. In his writ, Anderson requested sentence credit for time he spent at liberty after the Nebraska Department of Correctional Services

(Department) mistakenly released Anderson long before his sentences were to expire. After concluding that it had jurisdiction over the matter, the district court granted Anderson's writ. The Department appealed and also filed a petition to bypass the Nebraska Court of Appeals, which we granted. We reverse, and remand for reasons set forth below. We also vacate the district court's orders for related legal fees and costs.

*919 II. BACKGROUND

Anderson was convicted in Douglas County District Court of a Class III felony, theft by unlawful taking, and a Class IV felony, theft by unlawful taking. The court sentenced Anderson to 3 to 5 years' imprisonment for the Class III felony and **415 20 months' to 5 years' imprisonment for the Class IV felony. The court ordered the sentences to run concurrently.

On July 8, 2003, the Department mistakenly released Anderson from incarceration a mere 3 months into his sentence. If Anderson had remained in custody, he would have been eligible for parole on July 14, 2004, with a mandatory release date of July 14, 2005. The Department eventually discovered its mistake and, on September 16, 2003, filed a motion for *habeas corpus* and notice of hearing in the Douglas County District Court. The record is unclear, however, whether notice of this hearing was sent to Anderson, nor is it clear whether he received it. Anderson claims he did not receive the notice. Either way, Anderson did not appear at the hearing scheduled for September 24. That same day, the district court issued an order directing any law enforcement officers to arrest Anderson if they located him. Although the record does not explain why, the clerk's office did not issue that warrant for approximately 14 months.

In the interim, however, Douglas County filed a motion for declaration of forfeiture of Anderson's bail bond for the reason that Anderson failed to appear at the September 24, 2003, hearing. This motion, which was filed on March 17, 2004, and an accompanying letter were mailed to Anderson at an address specified in the certificate of service. Had Anderson received these documents, he certainly would have had reason to believe that something was amiss with his status as a released prisoner. It is not clear, however, where the county obtained that address or whether the address was, in fact, accurate. On March 26, the court entered a default judgment forfeiting Anderson's bond.

On January 3, 2005, a little more than 9 months after the bond forfeiture proceeding, police arrested Anderson during a routine traffic stop. Anderson was then returned to the Nebraska State Penitentiary in Lancaster County. After accounting for the time Anderson was absent from prison, the Department found that his *920 recalculated parole eligibility date was January 9, 2006, and that his new mandatory release date was January 9, 2007.

Anderson then filed a writ of *habeas corpus* in Douglas County District Court. At the initial hearing, the Department waived any objection to jurisdiction in Douglas County. Anderson was then transported from the state penitentiary to the Douglas County Correctional Center by the Douglas County sheriff. Sometime later, however, the Department attempted to quash Anderson's *habeas corpus* petition on the ground that the Douglas County District Court lacked subject matter jurisdiction. After an evidentiary hearing, the district court concluded that it had jurisdiction. This conclusion was based on *Gillard v. Clark*,^{FN1} which the district court read as standing for the proposition that jurisdiction in *habeas* proceedings can effectively be transferred from one county to another. The district court noted that the Department waived jurisdiction at the initial hearing and therefore concluded that jurisdiction was proper in Douglas County.

FN1. *Gillard v. Clark*, 105 Neb. 84, 179 N.W. 396 (1920).

The court then held an evidentiary hearing to address the merits of Anderson's underlying *habeas* claim. Here, the court cited our decision in *State v. Texel*,^{FN2} in which we held that prisoners must serve their sentences continuously and therefore may not consent to serving sentences intermittently. As a result, the court granted Anderson's writ. In response, the Department**416 filed a notice of appeal, our case No. S-05-1561.

FN2. *State v. Texel*, 230 Neb. 810, 433 N.W.2d 541 (1989).

Shortly thereafter, the district court entered two additional orders. In its first order, filed on January 20, 2006, the court granted Anderson's request that the Department pay court costs. Then, in an order filed on February 10, 2006, the court permitted Anderson to withdraw his request that the Department pay his legal fees. The Department appealed these orders, our case No. S-06-206, and filed a petition to bypass the Court of Appeals. We consolidated both appeals for our review.

*921 III. ASSIGNMENTS OF ERROR

On appeal, the Department assigns that the district court erred by (1) finding that it had subject matter jurisdiction over Anderson's habeas petition, (2) granting habeas corpus relief to Anderson, and (3) entering the January 20 and February 10, 2006, orders after the Department perfected its initial appeal.

IV. STANDARD OF REVIEW

[1] A jurisdictional question that does not involve a factual dispute is determined by an appellate court as a matter of law, which requires the appellate court to reach a conclusion independent of the lower court's decision.^{FN3}

FN3. *State v. Loyd*, 269 Neb. 762, 696 N.W.2d 860 (2005).

[2] It appears that Nebraska case law has not yet expressly identified the exact standard of review on appeal of a habeas petition. Drawing insight from other jurisdictions, we hold that on appeal of a habeas petition, an appellate court reviews the trial court's factual findings for clear error and its conclusions of law de novo.^{FN4}

FN4. See *Garcia v. Mathes*, 474 F.3d 1014 (8th Cir.2007).

V. ANALYSIS

We think it prudent to address the arguments in the order in which they were presented to us. Accordingly, we begin our analysis by addressing whether the district court had jurisdiction and then consider the Department's claim that Anderson was not entitled to habeas relief. We conclude our analysis by addressing the orders of the district court issued after the Department's notice of appeal.

1. JURISDICTIONAL QUESTION

[3] [4] The Department claims that the district court for Douglas County did not have subject matter jurisdiction over Anderson's habeas petition because Anderson was confined in Lancaster County. It is well established that if the court from which an appeal was taken lacked jurisdiction, the appellate court acquires no jurisdiction.^{FN5} Thus, if the district court lacked jurisdiction to *922 entertain Anderson's habeas petition, we, too, would have no jurisdiction to review the merits of Anderson's petition.

FN5. *State v. Jacques*, 253 Neb. 247, 570 N.W.2d 331 (1997).

[5] [6] Before we proceed to the substance of the jurisdictional issue, we pause to note our belief that the Department may have misspoken when it fashioned its argument. The argument that the case should have been brought in the district court for Lancaster County as opposed to the district court for Douglas County is perhaps a challenge to venue rather than subject matter jurisdiction. The difference is significant. For one, litigants cannot confer subject matter jurisdiction upon **417 a tribunal by acquiescence or consent.^{FN6} In contrast, venue provisions confer a personal privilege

which may be waived by the defendant.^{FN7}

FN6. *Muir v. Nebraska Dept. of Motor Vehicles*, 260 Neb. 450, 618 N.W.2d 444 (2000) (citing *Hagelstein v. Swift-Eckrich*, 257 Neb. 312, 597 N.W.2d 394 (1999)).

FN7. *Id.*

In addition, we think it clear that the Douglas County District Court had subject matter jurisdiction in this case. Under Nebraska law, an application for habeas relief may be made to "any one of the judges of the district court, or to any county judge."^{FN8} Because "any" district judge obviously includes the district court for Douglas County, it is beyond dispute that the district court for Douglas County had subject matter jurisdiction over Anderson's habeas claim.

FN8. Neb.Rev.Stat. § 29-2801 (Reissue 1995) (emphasis supplied).

[7] [8] But while the above language makes clear that any and all district courts in Nebraska have subject matter jurisdiction over habeas claims, it does not identify which county's district courts may hear habeas claims. This issue—essentially a question of venue—is the issue which lies at the heart of the Department's argument. To resolve that question, we turn to *Gillard*,^{FN9} in which this court held that

FN9. *Gillard, supra* note 1, 105 Neb. at 87, 179 N.W. at 398. See, also, *Addison v. Parratt*, 204 Neb. 656, 284 N.W.2d 574 (1979).

an application for a writ of habeas corpus to release a prisoner confined under sentence of court must be brought in the county where the prisoner is confined. [Citation omitted.] And where proceedings are instituted in another county, it is the duty of the court, on objection to its jurisdiction, to dismiss the proceedings.

Relying on *Gillard*, the Department points out that Anderson was confined in the Nebraska State Penitentiary in Lancaster County, yet sought habeas relief in the district court for Douglas County. In effect, the Department appears to suggest that the district court for Douglas County was not the proper venue to litigate the merits of Anderson's habeas claim.

[9] [10] While the Department would be correct under *Gillard's* general rule, other language in *Gillard* provided for a narrow exception:

[W]here application is made for a writ of habeas corpus to the district court of a county other than that in which the prisoner is confined, and the officer in whose custody the prisoner is held brings the latter into court and submits to the jurisdiction without objection, the prisoner is then under confinement in the county where the action is brought, and the court has authority to inquire into the legality of his restraint.^{FN10}

FN10. *Gillard, supra* note 1, 105 Neb. at 87, 179 N.W. at 398.

We believe this exception applies here. Although Anderson filed his habeas petition in Douglas County—a county other than the one in which he was confined—Anderson was later transferred to the Douglas County Correctional Center. Moreover, the Department submitted to the court's "jurisdiction" at the initial hearing by failing to object to venue in Douglas County. As such, Anderson was under confinement in Douglas County. The Douglas County District Court therefore had authority to consider

the legality of Anderson's restraint.

2. ANDERSON'S CLAIM FOR HABEAS RELIEF

[11] [12] Having resolved that the district court had jurisdiction over Anderson's habeas claim, we turn now to address the **418 merits of the habeas claim itself. The habeas corpus writ provides illegally detained prisoners with a mechanism for challenging the legality of a custodial deprivation of liberty.^{FN11} To secure habeas corpus relief, the prisoner must show that he *924 or she is being illegally detained and is entitled to the benefits of the writ.^{FN12}

FN11. See *Tyler v. Houston*, 273 Neb. 100, 728 N.W.2d 549 (2007).

FN12. See *id.*

Anderson argues that he is entitled to day-for-day credit toward his sentence for the time that he, an erroneously released prisoner, spent at liberty. Anderson essentially believes that his sentence continued to run from July 8, 2003, the date of erroneous release, to January 3, 2005, the date he was picked up by officers, as though he were in prison the entire time. Therefore, Anderson believes the Department was obligated to release him no later than July 14, 2005, the date his sentence was originally set to expire, and that detaining him beyond that date was illegal.^{FN13}

FN13. See *Plercy v. Parratt*, 202 Neb. 102, 273 N.W.2d 689 (1979).

In making this argument, Anderson invokes a line of cases under which erroneously released prisoners received sentence credit based on the belief that prematurely releasing and then reincarcerating a prisoner impermissibly interferes with the prisoner's right to expeditiously pay his or her debt to society.^{FN14} We review this authority immediately below, then address what impact it may have on the present case in a subsequent section.

FN14. See, *In re Roach*, 150 Wash.2d 29, 74 P.3d 134 (2003) (collecting cases); Gabriel J. Chin, *Getting out of Jail Free: Sentence Credit for Periods of Mistaken Liberty*, 45 Cath. U.L.Rev. 403 (1996) (same).

(a) Theories Permitting Relief to Prematurely Released Prisoners

As set forth in the seminal case of *White v. Pearlman*,^{FN15} a prisoner's "chance to re-establish himself and live down his past" is frustrated if the prisoner is prevented from serving his sentence continuously. This is because "a prisoner sentenced to five years might be released in a year; picked up a year later to serve three months, and so on ad libitum, with the result that he is left without even a hope of beating his way back." ^{FN16} Therefore, on the theory that the government should not be "permitted to *925 play cat and mouse with the prisoner, delaying indefinitely the expiation of his debt to society and his reintegration into the free community," ^{FN17} numerous courts now employ various remedies in cases involving interrupted sentences.

FN15. *White v. Pearlman*, 42 F.2d 788, 789 (10th Cir.1930).

FN16. *Id.*

FN17. *Dunne v. Keohane*, 14 F.3d 335, 336 (7th Cir.1994).

Specifically, courts have developed three distinct theories for granting relief to a prematurely released prisoner.^{FN18} The first theory is based on notions of due process and is often called the "waiver-of-jurisdiction theory."^{FN19} It appears that courts apply the waiver-of-jurisdiction theory when the premature release resulted from gross negligence by prison officials and lasted "a long period of time."^{FN20} In such cases, the ***419** government is said to have waived its right to reincarcerate the prisoner and thus the remedy is a complete exoneration of the prisoner's sentence.^{FN21} The rationale is that it would be "unequivocally inconsistent with 'fundamental principles of liberty and justice' to require a legal sentence to be served" after such an interruption.^{FN22}

FN18. See, *Tyler, supra* note 11; *In re Roach, supra* note 14.

FN19. *Schwichtenberg v. ADOC*, 190 Ariz. 574, 577, 951 P.2d 449, 452 (1997).

FN20. *In re Roach, supra* note 14, 150 Wash.2d at 34, 74 P.3d at 137. See, also, *Schwichtenberg, supra* note 19.

FN21. *In re Roach, supra* note 14; *Schwichtenberg, supra* note 19.

FN22. *Green v. Christiansen*, 732 F.2d 1397, 1399 (9th Cir.1984).

The second theory, devised by the Ninth Circuit, is known as the "estoppel theory" and is also rooted in notions of due process.^{FN23} Under this theory, the government is estopped from reincarcerating the prisoner when a particular set of circumstances are present. Essentially, those circumstances arise when (1) the government knew the facts surrounding the release, (2) the government intended that the prisoner would rely upon its actions or acted in such a manner that the prisoner had a right to rely on them, (3) the prisoner was ignorant of the facts, and (4) the prisoner relied on the government's actions to his or her detriment.^{FN24}

FN23. *U.S. v. Martinez*, 837 F.2d 861, 865 (9th Cir.1988). Accord *Schwichtenberg, supra* note 19 (citing *Martinez, supra*).

FN24. *Green, supra* note 22.

***926** Notably, a prisoner who knew that his or her release was erroneous cannot claim to have been "ignorant of the facts" and therefore cannot invoke the estoppel theory.^{FN25} Further, because the estoppel theory is rooted in due process, and because a due process challenge to executive action requires behavior that is "egregious [and] outrageous,"^{FN26} the estoppel theory requires some affirmative misconduct by authorities.^{FN27}

FN25. *Martinez, supra* note 23, 837 F.2d at 865.

FN26. *County of Sacramento v. Lewis*, 523 U.S. 833, 847 n. 8, 118 S.Ct. 1708, 140 L.Ed.2d 1043 (1998).

FN27. *Martinez, supra* note 23.

[13] [14] The third and final remedy courts use in interrupted-detention cases is to grant a prisoner day-for-day credit for the time spent at liberty. FN28 However, numerous federal appellate courts have held that the Due Process Clause does not require credit for the time spent at liberty in cases of an interrupted sentence. FN29 Instead, credit for time spent at liberty is a common-law doctrine rooted in equity and is often called the "equitable doctrine." FN30 In contrast to the waiver-of-jurisdiction or estoppel theories, a prisoner is eligible for credit under the equitable doctrine when the premature release is due to simple negligence by officials. FN31

FN28. *Tyler, supra* note 11; *In re Roach, supra* note 14.

FN29. See, e.g., *Vega v. U.S.*, 493 F.3d 310 (3d Cir.2007); *Thompson v. Cockrell*, 263 F.3d 423 (5th Cir.2001); *Hawkins v. Freeman*, 195 F.3d 732 (4th Cir.1999); *Dunne, supra* note 17.

FN30. *Tyler, supra* note 11, 273 Neb. at 108, 728 N.W.2d at 556. Accord, *In re Roach, supra* note 14; *Schwichtenberg, supra* note 19.

FN31. *In re Roach, supra* note 14; *Schwichtenberg, supra* note 19.

[15] By asking for day-for-day credit toward his sentence, Anderson relies solely on the equitable doctrine of credit for time spent at liberty. He does not advance an argument under the waiver-of-jurisdiction or estoppel theories, nor do we find evidence in the record suggesting that the Department committed misconduct rising to the level of a due process violation when it prematurely released Anderson. As such, today's decision focuses solely on **420 whether Anderson is entitled to credit for time spent at liberty under the equitable doctrine.

*927 For decades, the common-law rule in Nebraska was harsh but simple: Prisoners were not entitled to credit for time spent outside the prison, regardless of the circumstances. FN32 The first sign that this longstanding rule might be in jeopardy came in *Texel*. FN33 In dicta, the *Texel* court observed that prisoners have the right to serve their sentences in a continuous manner, FN34 a conclusion which, as noted above, is universally cited as a reason to provide a remedy in interrupted-sentence cases. FN35

FN32. See, *Ulrich v. O'Grady*, 136 Neb. 684, 287 N.W. 81 (1939); *Goodman v. O'Grady*, 135 Neb. 612, 283 N.W. 213 (1939); *Mercer v. Fenton*, 120 Neb. 191, 231 N.W. 807 (1930).

FN33. *Texel, supra* note 2.

FN34. *Id.*

FN35. See, e.g., *White, supra* note 15.

More recently, we had occasion to discuss credit for time spent at liberty in Tyler v. Houston.^{FN36} In Tyler, a prisoner sought day-for-day credit for time spent out on bond while the state appealed, and ultimately succeeded in overturning the district court's grant of habeas relief. Although we surveyed court decisions applying the equitable doctrine, we found it unnecessary to formally adopt or reject the doctrine in that case. As we explained, even jurisdictions recognizing the equitable doctrine refused to grant credit for time spent at liberty while the government appeals an adverse habeas ruling.^{FN37}

^{FN36.} Tyler, *supra* note 11.

^{FN37.} *Id.* (citing Hunter v. McDonald, 159 F.2d 861 (10th Cir.1947)).

Resolving Anderson's claim requires that we finally confront questions hinted at in Texel and left unresolved in Tyler. Are prisoners in Nebraska ever entitled to day-for-day credit for time erroneously spent at liberty under the equitable doctrine, and if so, under what circumstances will such credit be forthcoming? It is to those questions that we now turn.

(b) Variations of the Equitable Doctrine

In considering whether to adopt the equitable doctrine in Nebraska, we note that there are numerous variations to choose from. The Ninth Circuit, for example, simply grants credit for time erroneously spent at liberty so long as the prisoner did *928 not contribute to his or her release.^{FN38} In so holding, the Ninth Circuit does not take into account whether the prisoner misbehaves while at liberty.^{FN39} Several other courts, however, find that prisoners who "abscond[] legal obligations while at liberty" are not entitled to credit for time spent at liberty under the equitable doctrine.^{FN40}

^{FN38.} Martinez, *supra* note 23.

^{FN39.} See Schwichtenberg, *supra* note 19 (citing Martinez, *supra* note 23).

^{FN40.} Tyler, *supra* note 11, 273 Neb. at 109, 728 N.W.2d at 557. See, e.g., In re Roach, *supra* note 14; Brown v. Brittain, 773 P.2d 570 (Colo.1989); In re Messerschmidt, 104 Cal.App.3d 514, 163 Cal.Rptr. 580 (1980).

Similarly, courts recognizing the equitable doctrine disagree about whether to grant credit to prisoners who remained silent when released, even though they knew the release was premature. A few courts, including the Ninth Circuit and Arizona Supreme Court, conclude that such "informed silence" is inconsequential. Those courts grant credit for time spent at liberty even where the prisoner knew the release was erroneous and yet said nothing to authorities.^{FN41} In contrast, several other **421 courts have either denied credit in cases of informed silence^{FN42} or, conversely, granted credit specifically because the prisoner informed officials of the mistake.^{FN43}

^{FN41.} See, Martinez, *supra* note 23; Schwichtenberg, *supra* note 19. See, also, Vega, *supra* note 29; People ex rel. Bilotti v. Warden, 42 A.D.2d 115, 345 N.Y.S.2d 584 (1973).

^{FN42.} Diaz v. Holder, 136 Fed.Appx. 230 (11th Cir.2005); Gaines v. Florida Parole Com'n, 962 So.2d 1040 (Fla.App.2007); Pugh v. State, 563 So.2d 601 (Miss.1990). See,

also, *In re Roach, supra* note 14 (Chambers, J., concurring).

FN43. *White, supra* note 15; *United States v. Merritt*, 478 F.Supp. 804 (D.D.C.1979); *Hartley v. State*, 50 Ala.App. 414, 279 So.2d 585 (1973) (quoting *White, supra* note 15).

The district court in this case specifically found that Anderson did not cause his premature release, nor is there evidence that Anderson committed any crimes while he was erroneously at liberty. However, a legitimate question remains as to whether Anderson knew that his release was premature and yet remained silent.

*929 In *Schwichtenberg v. ADOC*,^{FN44} the Arizona Supreme Court addressed whether prisoners who remain in informed silence are entitled to credit under the equitable doctrine. The court framed the issue as whether a prisoner was "at fault" for his premature release simply because he knew the release was erroneous yet said nothing. The court observed that "fault" implies that an individual "refrained from doing that which he had a duty to do."^{FN45} Because a prisoner is "under no legal obligation" to speak up, the court concluded that a prisoner's informed silence should not disqualify him or her for sentence credit under the equitable doctrine.^{FN46}

FN44. *Schwichtenberg, supra* note 19.

FN45. *Id.* at 579, 951 P.2d at 454.

FN46. *Id.*

[16] We believe, however, that credit for time spent at liberty should be unavailable to prisoners who are aware of the error, yet fail to object. A refusal to grant credit for time spent at liberty is not a form of punishment, and therefore, it is irrelevant that prisoners have no legal duty to bring a mistake to the attention of authorities. Rather, "[c]redit for time erroneously at liberty is an equitable doctrine and should be applied only where equity demands its application."^{FN47} Therefore, the conclusion that informed silence disqualifies a prisoner from receiving sentence credit reflects not so much that the prisoner failed to execute a legal duty, but that such behavior renders the prisoner ineligible for equitable relief.

FN47. *In re Roach, supra* note 14, 150 Wash.2d at 38, 74 P.3d at 139 (Chambers, J., concurring).

That certain behavior might prevent a prisoner from invoking the equitable doctrine is not a novel concept. Indeed, as noted above, numerous courts believe that it would offend notions of equity to credit a prisoner for time erroneously spent at liberty if the individual spent that time committing additional crimes. We believe similar considerations ought to apply as to how a prisoner handles the prospect of being released prematurely.

[17] It has been said, both here and elsewhere, that two rights are served by the equitable doctrine. The first right is society's "right to expect that once a defendant has been incarcerated, the *930 time will not be served in bits and pieces."^{FN48} Of course, it is also true that "[t]hose tried and convicted of crimes owe a debt to society" and that "[s]ociety is entitled to have that debt paid."^{FN49} So whatever society's interest in seeing that the government**422 does not play cat and mouse with prisoners, society has at least as much "interest in knowing that its criminals are serving the

punishment to which they have been sentenced, regardless of ... negligent error attributable to the government." FN50

FN48. *Texel, supra* note 2, 230 Neb. at 814, 433 N.W.2d at 544.

FN49. *In re Roach, supra* note 14, 150 Wash.2d at 38, 74 P.3d at 139 (Chambers, J. concurring).

FN50. *Com. v. Blair*, 699 A.2d 738, 743 (Pa.Super.1997). See, also, *Artez v. Mulcrone*, 673 F.2d 1169 (10th Cir.1982).

That leaves us with the other interest served by the equitable doctrine: The right of "a prisoner ... to pay his debt to society in one stretch, not in bits and pieces." FN51 Drawing upon this language, Anderson reminds us that he "had the right to serve his sentence in one single period of incarceration under Nebraska law." FN52 Of course, a prisoner who genuinely cherishes his right to a continuous sentence, as Anderson purports to be, should at least "call[] attention to the mistake being made" before being "ejected from the penitentiary." FN53

FN51. *Texel, supra* note 2, 230 Neb. at 814, 433 N.W.2d at 544.

FN52. Brief for appellee at 9.

FN53. See *White, supra* note 15, 42 F.2d at 789.

In contrast, a prisoner who remains in informed silence when erroneously released and then asks for equitable relief upon reincarceration is not truly motivated by the right to a continuous sentence. Rather, such a prisoner is motivated by nothing more than the unsurprising desire to avoid as much jail time as possible. It takes little imagination to see that prisoners who know their release is premature might nevertheless remain silent in the hope that the mistake will go unnoticed by officials. Predictably, when officials discover the mistake, these prisoners try to obtain credit for time spent at large by arguing that the mistaken release—a mistake they declined to point out—deprived them of the right to a continuous sentence. It seems plain to us, however, that the equitable doctrine ***931** was not meant to encourage such a blatant attempt to game the system.

[18] [19] [20] Like a majority of courts, we agree that no equitable relief is required where a prisoner causes his or her own premature release from prison, thwarts governmental attempts at recapture, or misbehaves while at liberty. But we also believe that "[w]here it is clear that a prisoner had knowledge of a government mistake and made no effort to correct it, equity does not demand credit for time at liberty." FN54 As such, we hold that prisoners who had knowledge of a governmental mistake and yet made no effort to correct it—like prisoners who actively cause or prolong a premature release or commit crimes while at liberty—do not deserve sentence credit under the equitable doctrine. Such a prisoner has essentially acquiesced in the loss of his or her right to a continuous sentence.

FN54. See *In re Roach, supra* note 14, 150 Wash.2d at 39-40, 74 P.3d at 139 (Chambers, J., concurring).

[21] ✓ [22] ✓ To preserve the right to credit for time spent at liberty, a prisoner who knows his or her release is erroneous must make a reasonable attempt to notify authorities of the mistake. Although the prisoner need not "continue to badger the authorities," a reasonable attempt may well include voicing an objection at the time of release or contacting authorities a short time later in order to clarify his or her status.^{FN55}

FN55. *Merritt, supra* note 43, 478 F.Supp. at 807.

Having determined that informed silence disqualifies a prisoner from receiving **423 credit for time spent at liberty, we next address how lower courts should determine whether the prisoner knew that the release was, in fact, premature. It has been argued elsewhere that determining whether a prisoner knew the release was premature would be "difficult or impossible." ^{FN56} The argument is that the complex nature of modern sentencing schemes would make it difficult for prisoners to identify a precise release date and therefore recognize that they are being released prematurely.^{FN57}

FN56. *Schwichtenberg, supra* note 19, 190 Ariz. at 579, 951 P.2d at 454.

FN57. See *id.* See, also, *In re Roach, supra* note 14 (Chambers, J., concurring).

[23] ✓ [24] ✓ *932 In responding to these concerns, we note that "[a]mong our most cherished rights, as American citizens, are the freedom of choice as to our movements, to be free to go where and when we wish, and the right to control and use our worldly possessions as we see fit." ^{FN58} Given the significance of those interests, we believe that unless the sentence has been extensively modified by things such as earned release time, work release, or a commutation, a prisoner ought to know the date of his or her release with some precision. We therefore hold that the prisoner carries the burden to show that the complexity in calculating his or her release date, or some cognitive deficiency, prevented him or her from realizing the release was premature. At the same time, the government has what essentially amounts to a burden of production to provide the prisoner with any and all records relevant to this inquiry. Such records would include any copies of the original sentencing order, as well as any records related to earned release time, work release, commutations, and any other such materials.

FN58. *Boockholdt v. Brown*, 224 Ga. 737, 739, 164 S.E.2d 836, 838 (1968).

[25] ✓ The record in this case does not conclusively resolve whether Anderson tried to inform officials that his release was premature. We therefore find it necessary to remand this cause for the trial court to determine whether Anderson tried to inform officials of their mistake and, if not, whether Anderson reasonably did not know his sentence was set to expire.

On remand, the district court is directed to make findings regarding the circumstances surrounding the 14-month lag from the date the district court authorized Anderson's recapture and the date the warrant was actually issued. Specifically, the district court is to determine whether Anderson had or should have had notice of the September 24, 2003, hearing on the Department's motion for capias. The parties should also present evidence with regard to Douglas County's motion to declare a forfeiture of Anderson's bond. If notice of either hearing was mailed to Anderson's residence, it could be evidence that Anderson knew his release was premature from that point forward. We reemphasize that the Department has a duty to provide any records and documents that may be relevant to this inquiry.

*933 On remand, the parties should also present evidence as to why the arrest warrant for

Anderson was not issued immediately after it was authorized by the district judge on September 24, 2003. Since the Department has a responsibility to provide any records relevant to this issue, the district court's inquiry in this regard should include a determination as to whether the delay was the part of an organized and diligent plan to notify, find, and reapprehend Anderson, or was instead the product of misconduct—negligent or affirmative—by public officials. If the latter, the district court shall determine what impact, if any, this should have on the equities of denying Anderson credit for any or all of the 14 months after the warrant was authorized, but before it was issued. Obviously, this equitable analysis should be conducted in a manner consistent with the rationale and policies expressed in this opinion.

3. PROPRIETY OF ORDERS FOLLOWING DEPARTMENT'S NOTICE OF APPEAL

[26] The only issue remaining for our resolution is whether the district court exceeded its authority when it issued orders granting Anderson's request for payment of court costs and granting Anderson's motion to withdraw a prior request for legal fees. To refresh, these orders, filed on January 20 and February 10, 2006, respectively, were issued *after* the Department had already filed notice of its intent to appeal the district court's decision to grant Anderson habeas relief.

[27] It is well settled that a trial court is divested of jurisdiction when a party perfects appeal of a final order.^{FN59} The question here is whether an order granting habeas relief to the petitioner qualifies as a final order. Anderson argues that the order granting the writ of habeas corpus was not a final order because there were still matters left for the court to resolve. The Department argues the district court's order granting Anderson habeas relief was the final, appealable order. We agree.

FN59. See, *Billups v. Scott*, 253 Neb. 293, 571 N.W.2d 607 (1997); *McLaughlin v. Hellbusch*, 251 Neb. 389, 557 N.W.2d 657 (1997); *WBE Co. v. Papio-Missouri River Nat. Resources Dist.*, 247 Neb. 522, 529 N.W.2d 21 (1995).

[28] [29] *934 Long ago, this court held that "[t]he test of finality for the purpose of an appeal in a habeas corpus proceeding is not necessarily whether the whole matter involved in the action is concluded, but whether the particular proceeding or action is terminated by the judgment."^{FN60} We have previously held that an order denying habeas corpus relief qualifies as a final order.^{FN61} Therefore we hold that an order granting habeas relief also qualifies as a final order. As such, the district court was divested of jurisdiction when the Department perfected its appeal of the district court's order granting Anderson's petition for habeas relief. We therefore vacate the orders filed January 20 and February 10, 2006, for lack of jurisdiction.

FN60. *In re Application of Tall, Tall v. Olson*, 144 Neb. 820, 825, 14 N.W.2d 840, 843 (1944).

FN61. *Olson*, *supra* note 60.

VI. CONCLUSION

We conclude that the Douglas County District Court had jurisdiction over Anderson's habeas petition. Anderson was confined in Douglas County at the time of the initial hearing in this case, and the Department waived jurisdiction at the initial hearing.

We further conclude that the district court erred in granting Anderson's habeas claim. The equitable doctrine of sentence credit for time spent at liberty should not apply in cases where the prisoner (1) caused or prolonged the premature release, (2) committed crimes while at liberty, or (3) knew the release was premature yet failed to bring the mistake to the government's attention. Because we cannot determine, based on this record, whether Anderson attempted to inform authorities of their mistake, we find it necessary to remand the cause to the district court. On

remand, the court is to determine whether Anderson made a reasonable attempt to inform authorities of their mistake and, if ****425** not, whether Anderson legitimately did not know his release was premature. As expressed above, the court is also directed to make factual findings and conclusions regarding the circumstances surrounding the 14-month period between the ***935** time the district court authorized an arrest warrant for Anderson and when it was issued.

Finally, we hold that the district court lacked jurisdiction when it issued two orders after the Department perfected its appeal of the court's decision to grant Anderson's petition. Accordingly, those orders are hereby vacated.

JUDGMENT IN NO. S-05-1561 REVERSED, AND CAUSE REMANDED FOR FURTHER PROCEEDINGS.

JUDGMENT IN NO. S-06-206 VACATED.

CONNOLLY and GERRARD, JJ., concur in the result.

WRIGHT, J., concurring.

I concur. The issue is whether Anderson is entitled to credit for time spent at liberty as a result of being prematurely released. This is an equitable doctrine.

If the prisoner is obligated to notify the proper authority when he knows his release was premature, the State has an obligation to act when it discovers the error. The State is permitted one error, but not two.

The Department discovered its mistake and sought a warrant in Douglas County District Court. The court signed the warrant, but the clerk's office did not issue the warrant for approximately 14 months.

When considering what is fair, the State cannot be twice negligent at the prisoner's expense. Once the State discovered the premature release, it had a duty to act promptly.

If the State cannot establish a valid reason why the warrant was not issued immediately after it was signed by the court, Anderson should be entitled to credit for the time the State knowingly failed to act. There is no evidence that Anderson caused his premature release, nor is there evidence that he committed any crimes while he was at liberty. Equity must shine on both sides of the coin.

Neb., 2008.

Anderson v. Houston

274 Neb. 916, 744 N.W.2d 410

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- [2006 WL 5529673](#) (Appellate Brief) Brief of Appellee David J. Anderson (Jul. 14, 2006)

Judges and Attorneys ([Back to top](#))

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Judges

- **Connolly, Hon. William M.**

State of Nebraska Supreme Court

Lincoln, Nebraska 68509

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- **Gerrard, Hon. John Melvin**

United States District Court, Nebraska
Lincoln, Nebraska 68508-3803

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• **Heavican, Hon. Michael G.**

State of Nebraska Supreme Court
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• **McCormack, Hon. Michael**

State of Nebraska Supreme Court
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• **Polk, Hon. Marlon A.**

State of Nebraska District Court, 4th District
Omaha, Nebraska 68183

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• **Stephan, Hon. Kenneth C.**

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• **Wright, Hon. John F.**

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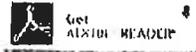
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**State of Nebraska
Workplace Investigation****Statement of Larry Wayne**

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.

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 Houston 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.

**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.

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 Rlethmuller 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

**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 filling 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* 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.

Statement of Kyle Poppert
Page 5 of 5

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

7-31-14

Date

**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

Statement of Michael Kenney
Page 4 of 4

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

Excerpts from Governor's June 18 Press Conference

Q: The attorney general suggested that those who have been out and their sentences would have been completed by now need to be treated differently, particularly if they've gone on with their lives as law-abiding citizens. What do you think of that?

GOVERNOR HEINEMAN: First of all, let me be very clear. I've talked to the Attorney General. I think he said that was an option. He wasn't quite sure what the final answer would be, okay? We are going to follow the advice of the Attorney General of the state. He's the chief law enforcement officer, chief legal officer for the state. So we want to give them time to review and make a determination how you handle each one of these cases cause they're going to be a little bit different. And I don't think he's made a final decision on it.

Q: But on a common sense level, do you think those people ought to be treated differently? They've gone on with their lives.

GOVERNOR HEINEMAN: This is a legal issue, okay. I'm not a lawyer. We've got a great relationship with the Attorney General. I'm going to respect his opinion. We're going to follow what the Attorney General tells us what to do in that regard. Because he's going to be the one that's aware of other potential lawsuits. And again, that's got to be a unique situation, versus those who haven't completed their term even if they were out for a period of time.

Excerpts from Governor's June 26 Press Conference

GOVERNOR HEINEMAN: The recalculation shows that 306 inmates were released early. 257 inmates of 306 released early have been back in his or her community longer than his or her recalculated release date. According to Anderson vs. Houston, any individual who was released early and who has not committed a crime since their release is entitled to be credited with time served in the community towards their release date. Therefore, these 257 individuals have completed their sentence requirement and will not be returned to incarceration.

ATTORNEY GENERAL BRUNING: Remember that there were 257 inmates who because of the Anderson court case they were released early but if they have been on the the outside and not committed additional crimes, they get credit for being on the outside. It was the state's mistake, and so those people we are not going to reincarcerate.

ATTORNEY GENERAL BRUNING: We hope they look at it from the framework that they've now had a two or three or four year opportunity to be on the outside when they should have been on the inside. I know it's going to be difficult for them to go back for a couple of years but we hope they'll do it peacefully because they've had two or three or four years on the outside they shouldn't have gotten in terms of their sentence. We're going to give them credit for it, by the Anderson vs. Houston case. They're going to get credit for that even though they weren't on the inside. They were on the outside. We're trying to be as humane as we can about it. We hope these guys will come in peacefully.

ATTORNEY GENERAL BRUNING: The case law is clear, they owe us the time. The case law is clear that they get credit for the time that they were on the outside, if they didn't screw up.

GOVERNOR HEINEMAN: I mentioned earlier, for example, in the course of our conversations, in addition to finding out about the Anderson case law, we also have seven or eight people we believe who qualify for the reentry furlough program. And that could particularly could be valuable for those

who only have a short time remaining. They'll be in our custody under that program and finish their time.

ATTORNEY GENERAL BRUNING: This tranche of warrants, of orders that were signed and warrants that were issued, is people that owe us a significant amount of time. So the guy that owes us a month is not in this tranche of warrants, or a week or two months...The people that are being brought back it's going to be a year or more, roughly.

FOR IMMEDIATE RELEASE
June 26, 2014, 10:20 a.m. CT

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SHARE 

Governor Heineman and Attorney General Bruning Provide an Update on Department of Correctional Services

(Lincoln, Neb.) Today, Gov. Dave Heineman and Attorney General Jon Bruning provided an update regarding the review of mandatory minimum sentences issued since 1995.

"The Department of Correctional Services, the Attorney General and I have had several conversations on the most judicious way to handle the early release of inmates from Nebraska's correctional system," said Gov. Heineman. "The State of Nebraska is pursuing a balanced legal strategy, thanks to the leadership of Attorney General Bruning and his legal team."

"We are moving forward with public safety at the forefront, including the safety of law enforcement officers," said Bruning. "We requested orders and arrest warrants for a number of inmates who were released erroneously in the counties where they were sentenced. Every judge presented with this request signed an order and issued an arrest warrant."

All mandatory minimum sentences imposed since 1995 have been reviewed on an individual case-by-case basis. This was necessary because the Legislature changed the law in 1995, so that good time does not apply until a mandatory minimum sentence has been served.

As of today, 567 current inmates had their sentence recalculated. None of these inmates were released early.

The Department of Correctional Services released 306 inmates early. Of the 306, 257 individuals have been back in his or her community longer than his or her recalculated release date. According to *Anderson vs. Houston, 277 Neb. 907 (2009)* any individual who was released early, and who has not committed a crime since their release is entitled to be credited with the time served in the community toward their release date. Therefore, these 257 individuals have completed their sentence requirement and will not be returned to incarceration. Three inmates are deceased, and five were discharged successfully from parole.

Of the remaining individuals, some are already in the custody of the Department of Correctional Services, some qualify for the re-entry furlough program one is in the process of being paroled, and 20-25 will be returned to the corrections system.

Officials: 873 Nebraska inmates erroneously received reduced sentences

By Todd Cooper, Paul Hammel, Alissa Skelton and Matt Wynn / World-Herald staff writers |
Posted: Friday, June 27, 2014 9:44 am

Nebraska's prison screw-up is much bigger than originally estimated: 873 inmates erroneously received reduced sentences over the past 20 years, state officials revealed Friday.

The fix will cost the state dearly: an estimated \$50 million or more to house current prisoners for the 2,050 years just added to their collective sentences.

At the same time, Gov. Dave Heineman said the roundup of prisoners will be much smaller than he originally outlined.

State officials will focus only on the 41 inmates who were released early and should still be in prison today. They have no plans to round up more than 250 who are on the streets but would have completed their sentences by now.

Those decisions, Heineman said, were not made because Nebraska's prisons are overcrowded.

The state's prisons are 58 percent above capacity, a condition that already has prisoners filing lawsuits and an outside consultant advising the state.

"This was not done because of overcrowding," Heineman said. "This was a mistake. The bad guys need to be locked up, and they will be locked up."

Most will be imprisoned for quite a while. A June 15 World-Herald investigation exposing the state's faulty sentence calculations prompted prison officials to add 2,050 collective years to the sentences of 567 current prisoners.

Those 567 inmates — 13 percent of the state's prison population — will remain in prison anywhere from one year to 35 years longer. Average extension: 3½ years.

Those additional years will cost taxpayers an estimated \$50 million or more, before inflation, based



Heineman, Bruning at prisoner roundup press conference

Nebraska Gov. Dave Heineman, right, and Attorney General Jon Bruning hold a press conference on Friday at the State Capitol in Lincoln to address the Nebraska Department of Correctional Services' mistaken early release of prisoners.

on an estimate by The World-Herald.

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That's not the only cost being felt.

The State Patrol — with the assistance of local and federal law enforcement — has ventured across the state to fetch about 20 to 25 should-be prisoners who are still at large. And the prisoners already have begun to file lawsuits to challenge the unprecedented roundup.

Then there's the emotional toll.

A parole supervisor called ██████████ 24, of Lincoln as he left work Wednesday to tell him that he had three hours to report to State Corrections.

██████████ said he knows of at least five others who received a similar call. The father of two spent the night on a cot. In the morning, he was told to pack his things, no explanation given.

A parole officer dropped him off at home.

He was initially picked up because he had 18 months remaining on his sentence for possessing a firearm and cocaine. He wasn't told whether his sentence will be recalculated.

██████████ said he has consulted a lawyer about possible legal action against the state.

"Who knows, I could get a call tomorrow saying I have to go back in," ██████████ said. "It is not right. It is absolutely ludicrous. I don't see how it takes them so many years to realize they messed up sentences."

In Gosper County in central Nebraska, a panicked should-be prisoner, David Amesbury, called The World-Herald as authorities were closing in on him Friday.

Shortly after 1 p.m., Nebraska state troopers showed up at his doorstep with an arrest warrant.

"The (Corrections) department erroneously released the defendant from custody prior to his mandatory discharge date," the warrant says, before giving the proper calculation.

Amesbury, a convicted sex offender who possessed child pornography, went back to prison peacefully, as he had promised earlier this week.

However, he was clearly shaken. Troopers handcuffed Amesbury and told him that they were taking him to a state facility in Lincoln to be processed before transferring him to the Nebraska State Penitentiary.

"I gotta go now," Amesbury said as officers gave him instructions. "They are taking me in. I hope I can get assistance so I can try to get out very soon."

His release date won't be any time soon, though. Amesbury, 54, has five more years left on his sentence, according to his warrant and World-Herald calculations.

World-Herald special investigation: Despite new crimes, Nebraska inmates still getting away with skipped time

By Todd Cooper, Matt Wynn and Alissa Skelton / Copyright©2014 Omaha World-Herald |

Posted: Monday, September 29, 2014 12:30 am

Fifty-one inmates who were let out of prison early spent their dumb-luck freedom committing more crimes.

They racked up 235 charges, resulting in 33 felony and 102 misdemeanor convictions, a World-Herald follow-up investigation shows.

All those crimes were committed — and all the costs of arrest, incarceration and prosecution were incurred — when the prisoners still should have been sitting in cells.



prisonsplash

And there's a kicker: The Nebraska Supreme Court says such prisoners should serve the skipped portion of their sentences if they squandered their freedom by continuing their criminal ways.

Yet the newspaper's analysis of police, court and prison records shows that the state has ignored the high court ruling — and the criminal records of released prisoners — as it has sought to clean up the mess created by prison officials who miscalculated sentences for decades.

The records detail a bevy of crimes committed while the prisoners should have been behind bars. Five assaults, including three of police officers. Sixteen thefts. Seventeen drug possessions. Seven drug dealings. Five sex-offender violations. Four weapons counts. A litany of misdemeanors: DUIs, child abuse, trespassing, driving with a suspended license.

And one drunken crime that exacted the ultimate price.

Hermino Alamilla closes his deep-set eyes.

He races through a choppy, almost Zapruderlike memory of Aug. 19, 2013 — the day he drove drunk with his best friend, Jerry "JR" Ramirez, riding shotgun.

Alamilla's memories are stitched together by his quiet, melodic use of the phrase "next thing I know."

He finishes his overnight shift at Bosselman's truck stop. Picks up JR. Makes plans to visit the grave of a friend killed in a car wreck years earlier.

Drinks several beers. Eats lunch. Drinks some more.

Weaves through traffic on Highway 281, a four-lane drag on the edge of Grand Island.

Next thing I know ...

His Cadillac spins 180 degrees, dives into the median, rolls and winds up on its roof in the opposite lanes.

Alamilla comes to but can't find Ramirez. He belly crawls from the wreckage, searching for his best friend.

Next thing I know ...

He's clutching his best friend. Ramirez's face is "so messed up" it's unrecognizable.

Alamilla's voice trails.

Next thing I know ...

His eyes swim.

"My best friend is dead ... because of me."

Here's what Alamilla didn't know: He shouldn't have been out that day.

The Grand Island man, convicted on a cocaine dealing charge, was released in June 2012 — 18 months before he should have been.

Had he stayed until his correct release date, one thing is certain: Ramirez would not have been in a car with him on Aug. 19, 2013.

And Ramirez's 7-year-old son, Eli, might still have his dad.

Add Ramirez's death to the consequences of the Nebraska Department of Correctional Services' massive miscalculations. A June 15 World-Herald investigation revealed that prison officials, in violation of Nebraska Supreme Court rulings in 2002 and 2013, had been releasing hundreds of prisoners years too soon.

In the aftermath, officials added more than 2,000 years to the sentences of 550 inmates who were residing in a Nebraska prison at the time of the newspaper's revelation. They rearrested about 20 others whose corrected release dates should have kept them in prison well past June.

But what to do with the inmates — including Alamilla — whose actual release dates had already passed?

State officials had some guidance. In a 2008 ruling, the Nebraska Supreme Court laid out a critical condition for an inmate like Alamilla to receive sentence credit for time inadvertently spent on the streets: that he behave while out.

“It would offend notions of (justice) to credit a prisoner for time erroneously spent at liberty if the individual spent that time committing additional crimes,” the high court wrote.

Yet the state has not heeded that ruling, the newspaper’s analysis showed.

After sifting through criminal records for the past month, The World-Herald found:

» Many of the 51 returned to prison on sentences for new crimes. But they haven’t been required to serve any of the time they owed on the original sentences.

» The state has essentially vacated 113 years of prison sentences by not holding the 51 inmates to the Supreme Court’s behavior standard. Net effect: a two-year sentence credit per prisoner.

» The new crimes affected more than three dozen victims. Even in so-called victimless crimes, there was a toll: a bed in a jail, the time of police officers and a prosecutor, the attention of a public defender and a judge.

“There’s a cost to all of this,” Douglas County Attorney Don Kleine said. “You start with the emotional toll. Everyone recognizes the impact of violent crime, but there’s a psychological impact whenever someone takes advantage of someone else. Then there’s just a tremendous amount of work involved, from all sides of the justice system.

“If you consider all of that, it’s just hard to imagine someone would get credit for a time period when they’re committing other crimes.”

Among those getting credit:

» Patricia Jacobsen, 28, was released in July 2013, one year early from her sentence for dealing methamphetamine. Within a month she was arrested on a new meth dealing charge — and was prosecuted in federal court. After The World-Herald report in June, the state put Jacobsen on furlough — a sort of pre-parole parole — though she still had time remaining on her original sentence. A federal judge then ordered her to begin a five-year sentence for her latest meth-dealing conviction.

» Lincoln resident Peirce Hubbard-Williams, originally convicted of theft and being a habitual criminal, was let out five years ahead of his July 2016 release date. While out, he was convicted of felony possession of oxycodone. After the state sought to round up Hubbard-Williams in June, State Sen. Ernie Chambers lobbied on his behalf. State Parole Board members released him in July —

despite his new felony drug conviction. He is now a free man.

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» Aaron Finney, a habitual criminal and thief, was released in April 2010 — five years early. Finney racked up 23 misdemeanors, including domestic assault and several counts of theft, during his state-sponsored prison break. Then, in 2013, he was convicted on a felony weapons charge. A judge sentenced him to three years in prison. Under that sentence, he'll be released in 2015, just a few months after his original sentence should have ended.

Likewise, 48 other inmates have their own crimes they never should have been able to commit.

None quite like Alamilla.

After getting out in June 2012, Alamilla ran into problems you might expect from a man who refers to himself, despite his young age, as "institutionalized."

Just 29 at the time of his release, Alamilla had spent most of his 20s serving three separate prison stints: for marijuana possession, being an accomplice to a first-degree assault and for cocaine possession.

Let out from his last prison term on June 29, 2012, he returned to Grand Island to live with his mother.

He met some predictable, perhaps understandable, obstacles. His daughter's mother — who had alleged Alamilla had abused her — didn't want him around their toddler daughter, Mariah.

Alamilla hired an attorney to help him through a child-custody proceeding — and, in time, reconnected with Mariah. At one point he spoiled the toddler by buying her some "ridiculously expensive" black-and-pink Air Jordans. "She loves those shoes," he says.

Alamilla loved being able to buy them. Finally he had found some stability: landing a full-time job making \$10 an hour as a maintenance man at Bosselman's.

"I really liked the people I worked with," he says. "I felt like I was going to be successful this time, like I was ready to put my past behind me."

Meanwhile, he and Ramirez, who worked at a cold-storage facility, were fast friends. Had been since their teenage years. And they now lived a half-block away from each other — two childhood buds who hung out together.

"Every time anyone saw me without him, it was 'Where's (JR)?,'" Alamilla says. "That was my boy, you know? That was my bro right there."

Faced with The World-Herald's revelations last June, the state's highest-ranking officials went into — their words — triage mode.

Prosecutors were fuming as they pushed for the return of all prisoners who were given a vacation, courtesy of Corrections.

Gov. Dave Heineman, saying he was angry, called for a swift response.

“Right now, we have criminals out on the streets that should be in the prison system and we want to get them back,” Heineman said on June 16. “We’re working with the Attorney General’s Office to determine what appropriate legal action is needed to do that.”

Heineman was adamant. The governor said the scope of the roundup would not be affected by concerns about chronic crowding at Nebraska’s prisons, which are 57 percent over capacity.

“These individuals committed a crime, they were found guilty and a judge issued a sentence,” Heineman said. “We are going to take all steps necessary to bring these individuals back into the Corrections system to serve out their complete term.”

Others were tapping the brakes.

In an interview June 16, Nebraska Attorney General Jon Bruning said he had a team of about five attorneys working overtime to chart the best course.

“I do this job to protect the citizens of Nebraska,” Bruning said. “We have to look at ‘What’s the crime? What’s the danger to society?’”

Bruning gave a handful of hypotheticals that he feared the state might face in trying to round up released prisoners. Most were extreme examples.

“There are practical considerations here,” he said. “What if the guy has two weeks left to serve and he’s now living in Key West, Florida? Do we send two state troopers down there for four days to try to track him down? I mean, some of these are going to be factually very difficult to justify.”

About the same time, Sen. Chambers was advocating for prisoners, urging the state to not needlessly disrupt families that had just been reunited.

He went to bat for two Lincoln men who had been rounded up. Both had begged not to go back to prison. Both had declared they had turned their lives around since their early release.

Each of their redemption stories, however, had a major hitch: They had been arrested and convicted on new felonies after their early release.

Nonetheless, Chambers bent the ear of Corrections Director Mike Kenney.

“They were out at no fault of their own — they did not escape,” Chambers told The World-Herald in

June. "I am going to do everything I can to help resolve this and bring as few people back to prison as possible. The state made a mistake and prisoners should not be punished for it." 056

Heineman didn't share Chambers' belief that all released prisoners should be left alone. He applauded Chambers, however, for helping to shape how Corrections should deal with individuals who might be eligible for parole, furlough or other release programs.

"We have really appreciated Sen. Chambers' input as we look at part of the programs we are trying to put together for certain individuals who might qualify for (a) furlough program," Heineman said through a spokeswoman. "Our discussions are all a part of the larger strategy we are working toward."

On June 20 — five days after The World-Herald's report — the governor had settled on a straightforward strategy.

In effect, his roundup would look like this:

» If the early-released prisoners still should have been in prison as of late June, they're coming back. Many of them, anyway.

» If the early-released prisoners' sentence would have expired as of late June, they're done.

"The attorney general and I have had several conversations on the most judicious way to handle the early release(s)," Heineman said. "We believe we have a fair, quick and legal means for correcting the mistake."

Alamilla makes a beeline for Ramirez's house.

Just off his shift, he bangs on the door several times, hoping to hang with his best friend.

Finally, JR — known for his deep sleep — stirs, poking his head out the door.

"You down for a beer?" Alamilla asks.

The two have reason to drink. Their best friend, Johnny Garcia, then 17, died in a car wreck in December 2000. Another teen, suspected of drinking and driving, crashed and ran, leaving Garcia for dead.

Today — Aug. 19, 2013 — would have been Garcia's 30th birthday.

"Yeah," JR says. "Let's go swig."

They start with Four Loko, a high-alcohol concoction. Then they grab some lunch and wash it down with 32-ounce Bud Lights.

As they drink, they decide they should go visit Johnny's grave.

But first they stop off to pick up another friend, Jose "Joe" Coronado. He carts out some beer left over from a kegger the night before. "It's kinda stale," Coronado says, "but it goes down smooth after a while."

Alamilla decides he needs some cash. The three hop in his 1996 Cadillac, metallic blue with a white top. They zip to Bosselman's, where Alamilla runs into one of his co-workers.

"I guess she saw how messed up I was," Alamilla says. "She was, like, 'What are you doing? You guys need to be careful.'"

As Heineman, Bruning and Kenney, the Corrections director, determined whom to round up, they had a pivotal Nebraska Supreme Court ruling as their guide.

In a no-nonsense decision, the high court ruled in 2008 that an Omaha man, David Anderson, could receive credit for the time he spent out of prison after officials mistakenly released him.

But the high court made one condition abundantly and redundantly clear.

Five times, Chief Justice Mike Heavican, who wrote the court's unanimous opinion, railed against the notion that a prisoner should get credit if he "misbehaves while at liberty."

The Supreme Court's words:

- » "Like a majority of courts, we agree that no equitable relief is required where a prisoner misbehaves while at liberty."
- » "Prisoners who commit crimes while at liberty do not deserve sentence credit."
- » "Sentence credit should not apply in cases where the prisoner ... committed crimes while at liberty."

The governor himself cited the Anderson ruling several times. On July 2 and again on Aug. 15, Heineman said inmates who would have completed their sentence by late-June "qualified" for sentence credit under the Anderson ruling.

Heineman even quoted the ruling in a press release.

"According to Anderson ... any individual who was released early and who has not committed a crime since their release is entitled to be credited with the time served in the community toward their release date," the governor's statement began.

But he skipped over the good-behavior requirement as he continued: "Therefore, any inmate who has been back in his community longer than his recalculated release date will have completed his sentence requirement and will not be returned to incarceration."

That had legal experts — a Creighton law professor, a University of Nebraska law professor and four

longtime attorneys — scratching their heads.

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Josephine Potuto, a UNL law professor, said the state's strategy may have been reasonable, even efficient. But it's not consistent with the law.

"It seems to me that that's a kind of seat-of-the-pants, practical solution to it," Potuto said. "It just doesn't seem to jibe with what the court said."

Longtime Omaha defense attorney Steve Lefler said he was taken aback that the governor and attorney general — "tough-on-crime guys" — weren't using the Anderson ruling to pursue more prisoners.

"What's the word? Chutzpah?" he said. "It's surprising to me that they cited Anderson as the basis for leaving people out when even a cursory reading of Anderson indicates that a person's (criminal) record is a hugely important factor."

Lefler acknowledged the state would have run into challenges on what qualifies as a "crime." Does one misdemeanor count? Two? Ten?

Then again, Lefler said, a felony is a no-brainer.

"My goodness, spend a little time here," Lefler said. "Give it to a couple of law clerks to figure out what these inmates' records were (after release). It's not a monumental task to determine whether inmates behaved while they were out. It's not a monumental task to determine whether your response actually is consistent with the Anderson opinion."

A year later, this is what Alamilla remembers: Driving on Highway 281. JR in the front seat next to him. Relaxed. Too relaxed.

Coronado in the back seat — poking him.

"Joe wakes me up from the back seat," Alamilla says. "I look back, then forward. I can't concentrate. Next thing I know ..."

"Everything happens so fast."

The Cadillac peels away from a stoplight. Passes a car on the shoulder. Veers across lanes, plunges into the median, rolls and comes to a rest on its top in the opposite lanes.

Another motorist rushes to help and finds Ramirez outside the car, lifeless. Alamilla — who would later refuse a breath test — is despondent and defiant. And Coronado is screaming at Alamilla.

You dumb (expletive), I told you to slow down, I told you to slow down!"

Winning at the memory, Alamilla rolls up his sleeve to reveal a jagged burn on his left shoulder.

He isn't sure how he got the burn. Maybe from the pavement. Maybe from his mangled car. 059

One thing is certain, he says: If you look closely, the scar roughly forms a J.

'was laying on the pavement and I felt that burn,' Alamilla says. "And I was, like, 'Man, is this what hell is going to be like?'"

Heineman and Bruning declined requests for interviews to explain the state's strategy for the roundup.

Instead, the governor and attorney general — whose terms expire at the end of the year — issued a joint statement:

“Regarding the sentence calculation errors made by the Department of Corrections, the State of Nebraska continues to pursue a balanced and common sense legal strategy. For any criminal who was released early and then re-arrested, those convicted felons appeared in court, a judge conducted a pre-sentence investigation and then those individuals were sentenced for their additional crimes.”

What about the time the prisoners owed on the original sentences?

The governor and attorney general declined to comment, citing “matters currently in litigation.”

reality, none of those inmates has sued.

Potuto, the UNL law professor, said that's for good reason: The state hasn't sought to hold them accountable for the time left on their original sentences.

The only lawsuits the state has faced are from a few of about 20 inmates who were rounded up — inmates whose corrected release dates were well after late June.

The state paroled one of the inmates who sued. A judge freed another of the rounded-up inmates after his attorney discovered he had received an illegal sentence.

Several legal observers said it appears the state — despite the Supreme Court's strong wording — charted a straightforward course. Round up as few prisoners as possible. Stir up as little litigation as possible.

Lincoln attorney Jerry Soucie said state officials “clearly” weren't interested in going to court over the roundup.

Soucie doesn't criticize the state for leaving prisoners out, but for bringing them in. He noted that the returned prisoners were not given an initial court hearing when they were brought back into custody.

But whether they left inmates out or brought others back, Soucie sees one common denominator.

“It's all haste,” Soucie said. “For some reason they wanted to short-circuit the process. I think that's

unfortunate.”

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Clarence Mock, an Oakland, Nebraska-based defense attorney and former prosecutor, had another run for it.

“It’s ironic,” Mock said. “Especially when you consider that Corrections got into this mess by ignoring not one but two Supreme Court rulings. Now we have another Supreme Court ruling that is crystal clear and we’re not following that? This whole thing has just been baffling.”

Back in prison for the fourth time, Alamilla says he can't escape his memories of JR.

How he held JR's son, Eli, as a baby. How he told JR: "Dude, he has your eyes. You don't need a DNA test." How JR had asked him to look after Eli's mother if anything happened.

He fiddles with his inmate bracelet.

His new "dream sheet" — the term inmates use for the document with their projected release date — has him free on Feb. 13, 2024.

That accounts for the sentence he received for motor vehicle homicide. But the dream sheet doesn't tack on the 18 months he still owes on his original drug-dealing conviction.

Alamilla says he had no idea he shouldn't have been out.

"That's crazy," he says. "I've thought about that a lot."

He says his mind often races — the crash replaying, image by image, off each block of his cell walls in Lincoln.

The drunken stupidity. The recklessness. The car rolling. The belly crawl out of the vehicle. The scramble to find JR. The cold realization that his best friend was dead.

"I look at these walls every day and I think 'If Jerry could be alive right now, I would have sat right here,'" Alamilla says quietly. "I'd take the year and a half.

"What's a year and a half, you know?"

Contact the writers: 402-444-1275, todd.cooper@owh.com; 402-444-3144, matt.wynn@owh.com; 402-444-1066, alissa.skelton@owh.com

STATE OF NEBRASKA

DEPARTMENT OF CORRECTIONAL SERVICES

Michael L. Kenney

Director

July 24, 2014

Doug Nichols
Legislative Fiscal Office
State Capitol, Room 1007
Via Email



Dave Heineman
Governor

Dear Doug,

This letter is in response to questions you asked on behalf of a senator regarding the cost to the department of the recently discovered sentence miscalculations. There has been much discussion out in the public on this topic, some accurate and some speculation.

I have asked my staff to take an extensive look at the impact these calculations, specifically the longer lengths of stay for inmates serving mandatory minimum sentences, will have on the department.

Our calculations reveal an estimated fiscal impact of approximately \$4 million over the next 10 years. The full impact of the recalculations aren't realized until 50 years from now (in 2064) and become more speculative. Below, you will find answers to the specific questions you provided.

"Governor Heineman cited numbers saying that the recalculation of sentences for 567 inmates would add an additional 2,000 years collectively to their prison terms. Please send me the estimated cost that you will incur for these additional years."

There were 567 inmates who have had sentence recalculations resulting in longer lengths of stay. Many of these recalculations will have no impact on the department. For example, one inmate, who was admitted in February 2013, had a previous discharge date of 2167 and his new mandatory discharge date is 2177. While this is an increase of 10 years, it will have no impact on the department given in 2167 he would have been 215 years old.

In order to determine the realistic fiscal impact to the department, we took into consideration the age of the inmate at the original discharge date and his/her age at the recalculated discharge date. Vital Statistics reports the average life span in Nebraska as 75 years. Although we know inmates tend to have greater health issues at an earlier age, we used the age of 75 as a "cut off" in regards to the impact to the department. Therefore, inmates who would be 75 at the time of their original discharge date or at the time of their recalculated discharge date were not included in the analysis below. The first year this cut off impacted projections was 2025.

Looking at a ten-year span and assuming all inmates will remain incarcerated until their mandatory discharge dates, the fiscal impact from FY 2014 through FY 2024 would be \$4.1 million, and is broken down as follows. Note that the "number of inmate years" column refers to the number of inmates who would have discharged that year or prior to that year, and because of the recalculation, remain in NDCS custody.

Fiscal Year	Number of Inmate Years	Fiscal Impact
2014	2	\$12,841
2015	32	\$205,451
2016	64	\$410,902
2017	77	\$494,367
2018	90	\$577,832
2019	81	\$520,048
2020	55	\$353,119
2021	51	\$327,438
2022	64	\$410,902
2023	71	\$455,845
2024	57	\$365,960
TEN YEAR TOTAL	644 years	\$4,134,705

Using the 75 year cut off, the average additional length of time to be served per inmate is 2.8 years, the fiscal impact of which spans a period of 50 years or through 2064. From 2024 to 2064, the fiscal impact is projected at \$5,958,964. These figures reflect the FY 2013 per diem rate of \$6,422, which is consistent with how we project costs for fiscal notes. No facility costs are included as there is no need for an additional stand-alone facility based on these changes to discharge dates. Again, these figures assume all inmates will remain incarcerated for their entire sentences or until they reach age 75. As the inmates are paroled, this projection will decrease.

"It was also stated that 20-25 people released from prison will be returned to prison. Please tell me the length of time these people will serve when returned to prison and the cost to house them."

There are 15 inmates who have been or will be returned to prison to serve an additional 6 months to 4.5 years each. Assuming all inmates will remain incarcerated for the entirety of their sentences, the fiscal impact to NDCS will be \$159,594. When any of these inmates are paroled, these figures will decrease.

There are 13 inmates who were returned to RFP status to complete an additional 1 month to 8 months each for a fiscal impact of \$21,636.

Finally, there are four inmates who owe time and are currently incarcerated for a new crime. The additional amount of time they will need to serve has not been determined, as they do not meet the

requirements of Anderson v. Houston. If they are required to complete the full amount of time they were released early (5 years each), the fiscal impact would be \$128,495.

"Please send me an updated prison population chart that takes into account these sentence recalculations."

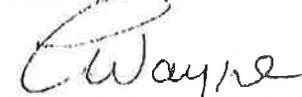
Please see attached chart. Note that previous projections put the population at 166 percent of capacity by 2024, and that increases slightly if no other legislative changes impact the rate of admissions to NDCS.

The parole/RFP number for 2014 is slightly different, as this number is an updated year-to-date figure (as of 6/30/2014).

The institutional population figures were increased each year by the number of corrected inmate sentence calculations.

Knowing of the broader interest of the Legislature in this issue, I have also copied members of the Appropriations and Judiciary Committees. If you have any additional questions or need further clarification, please do not hesitate to contact me.

Sincerely,

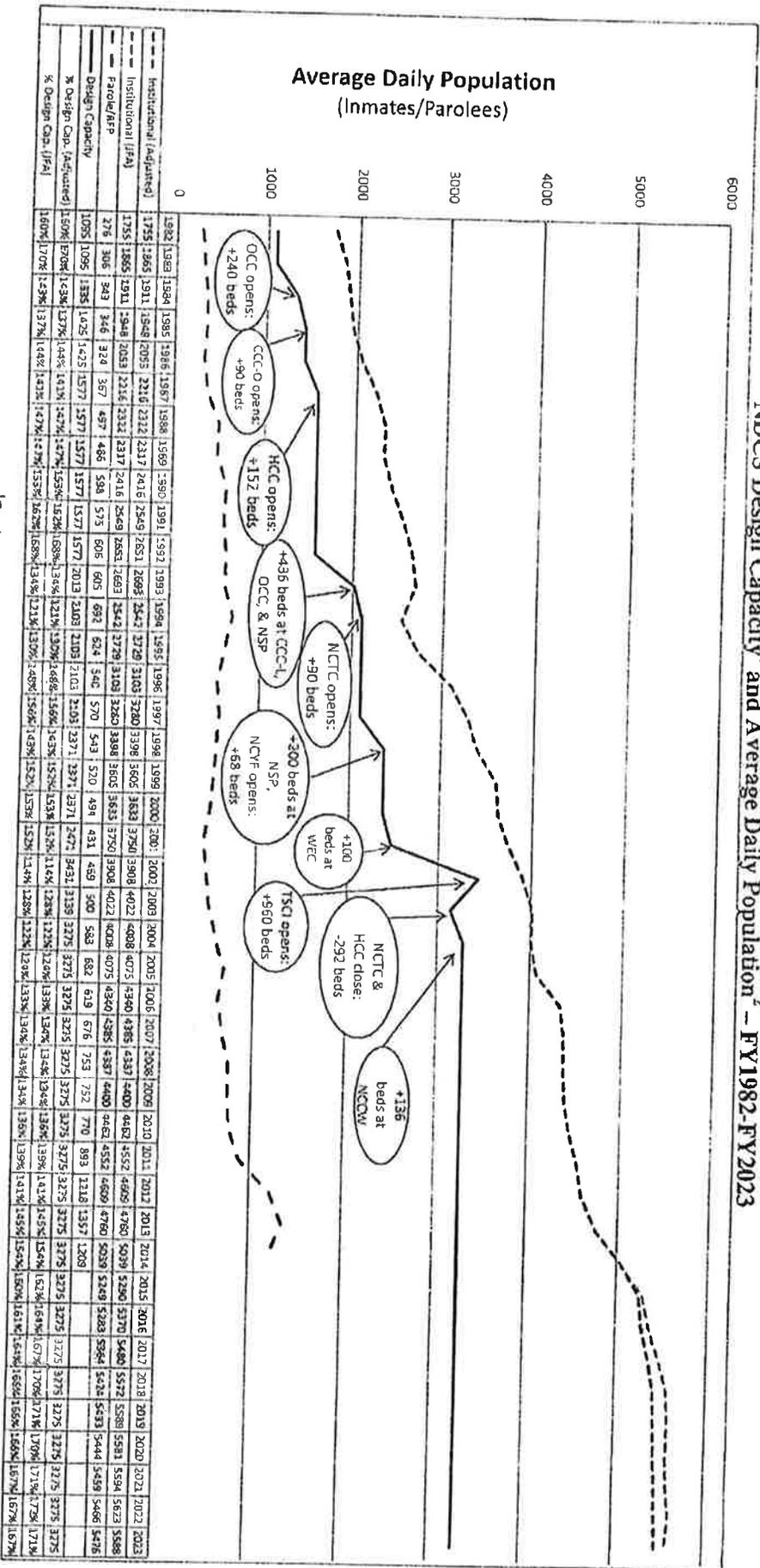

Michael L. Kenney, Director

FOR

Attachment

Cc: Members of the Appropriations Committee
Members of the Judiciary Committee
Governor Dave Heineman

NDCS Design Capacity¹ and Average Daily Population² - FY1982-FY2023



¹ Design capacity includes 100 beds at the Work Ethic Camp in McCook, NE.

² Institutional population projections after 2014 use EOFY population estimates provided by The JFA Institute (April 2013) and estimated increases from June 2014 NDCS sentence re-calculations.

Source: NDCS Inmate Data and Location History Records; JFA 10-Year Population Projection Rpt.

By Abby L. Vandenberg, 7/24/2014

From: Kenney, Mike
Sent: Friday, January 20, 2012 11:16 AM
To: Leonard, Linda; Davis, Tom A; Gosch, Jim; Jordan, Curt
Cc: Lewien, Barb
Subject: FW: Spreadsheet for Friday
Attachments: 01112012-1 Spreadsheets for Friday.xlsx

I will be discussing these lists at Monday's meeting and have some supplemental information from the Warden's meeting to guide us. Other than that, please look at Rex's instructions and sally forth! Thank you.

Mike Kenney, Warden
Omaha Correctional Center
(402) 522-7006 (Office)

mike.kenney@nebraska.gov

Strive to become the person you most respect.
- Mikail Fabrinov

From: Richard, Rex
Sent: Wednesday, January 18, 2012 2:31 PM
To: DCS CEO
Cc: Hopkins, Frank; Torres, Helen; Houston, Bob; Gissler, Layne; Poppert, Kyle; Boal, Beth; Wayne, Larry; Spindler, Robin
Subject: FW: Spreadsheet for Friday

Good afternoon all. Attached is the "no" list we discussed this morning. As you can see there are three tabs at the bottom with three different groups of data: The first one is "PED before 6/30/2012, all", the second is IPR=no, any TRD" and the third is "IPR=no, TRD in three years". I would suggest concentrating efforts on the third list, that being the IPR=no, TRD in three years as I think we will find the "fishing" best in this pool, rather than in the list with inmates who have TRD's many years in the future. This list can be modified via the "data" tab so that the list will group by facility and by ascending TRD. That is how I had the list when I closed the spreadsheets, and hopefully how it will appear when you open them. If not, give me a call and I can walk you through how that is done. Again, my thanks to all of you for your efforts on this matter.

Rex C. Richard
Reentry Coordinator
Nebraska Correctional Services

From: Boal, Beth
Sent: Wednesday, January 11, 2012 2:50 PM
To: Spindler, Robin
Cc: Richard, Rex; Robinson, Hank
Subject: Spreadsheet for Friday

Attached are the updated spreadsheets. They do not change a lot since we are using a fixed end date of 6/30/2012. But if you want me to rerun late tomorrow, I can.

Summary Counts:

1. Total with PED < or = 6/30/2012, IPR = Y, no TRD filter: 1023
2. PED < or = 6/30/2012, IPR = N, no TRD filter: 560

Also Included:

3. PED < or = 6/30/2012, IPR = N, TRD within 3 years: 429

Thank you,

Beth Boal
Office of the CIO
State of Nebraska
501 South 14th Street
P.O. Box 95045
Lincoln, Nebraska 68509-5045
email: beth.boal@nebraska.gov
phone: 402.471.0703 (OCIO)
402.479.5770 (DCS)

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From: Kenney, Mike
Sent: Monday, January 30, 2012 3:34 PM
To: Lewien, Barb; Leonard, Linda
Subject: FW: dcs recs of no - sorted by TRD
Attachments: parole rec no 1.9.12.xlsx

Linda,
 I know we discussed this briefly this morning and I thought you said you had OCC's list done. I have not seen it yet so if you brought it up here or sent it, I'll ask Tara about it. I do note that OCC had the largest number of names on the list so I'll be eager to see what we've done as I need to get back with Rex.
 Thanks.

Mike Kenney, Warden
Omaha Correctional Center
(402) 522-7006 (Office)

mike.kenney@nebraska.gov

Strive to become the person you most respect.
 - Mikail Fabrinov

From: Richard, Rex
Sent: Monday, January 30, 2012 1:53 PM
To: DCS CEO
Cc: Hopkins, Frank; Spindler, Robin; Houston, Bob; Wayne, Larry; Gissler, Layne; Poppert, Kyle; Boal, Beth
Subject: FW: dcs recs of no - sorted by TRD

Good afternoon all. This message is primarily intended for the Warden's at TSCI, NSP, OCC, CCCL and LCC. I just wanted to touch bases with you to let you know of our progress on the review of the "NO" list. To date I have received 8 updated IPR's for the individuals on this list. Using a June 1 cut off date, that is, not considering those who mandatorily discharge in February, March, April and May of 2012, I find that these institutions have the following numbers of inmates that MAY be considered for parole prior to July of 2012:

CCCL 19

NSP 41

LCC 46

OCC 91

TSCI 38

Based upon the number of updated IPR's that have been received at this time, I would ask that you **check with the staff at your respective institutions and possibly give me a bit of information on how the review and possible updating of the parole recommendations are coming at your facility.** Many thanks!

PS: "File review days" are scheduled with Ms. Casmer on both February 15 and February 27, so updates completed prior to those dates can still be considered. Please let me know if you have questions.

Rex C. Richard
Reentry Coordinator
Nebraska Correctional Services

From: Richard, Rex
Sent: Wednesday, January 18, 2012 2:06 PM
To: Boal, Beth
Subject: FW: dcs recs of no - sorted by TRD1

Rex C. Richard
Reentry Coordinator
Nebraska Correctional Services

From: Spindler, Robin
Sent: Monday, January 09, 2012 2:51 PM
To: Richard, Rex
Subject: dcs recs of no - sorted by TRD1

Robin Spindler, Deputy Director, Administrative ServicesR
Nebraska Department of Correctional ServicesR
402/479-5711R
402/479-5623 (fax)R

RR

If you need immediate assistance, please contact Katina Farritor at 402/479-5712 or Katina.Farritor@nebraska.gov .R

RR

Please note my new email address of Robin.Spindler@nebraska.govR

RR

R

From: Kenney, Mike
Sent: Sunday, September 08, 2013 2:10 PM
To: Cruickshank, Rich; Wees, Curt; English, Tom; Strode, Scott; Schmit, Ken; Granholm, Val
Subject: FW: communication with the Ombudsman regarding Nikko Jenkins

If any of you have had inquiries from the Ombudsman's office regarding Nikko Jenkins, please forward them to George Green as requested below. Thanks.

Mike Kenney, Warden
Omaha Correctional Center
2323 East Avenue J
Omaha, NE 68111
(402) 522-7211
mike.kenney@nebraska.gov

From: Green, George
Sent: Friday, September 06, 2013 2:24 PM
To: Hopkins, Frank; Wayne, Larry; Lindgren, Sharon; Kohl, Randy; White, Cameron; Wellage, Mark; Lewlen, Barb; Gage, Brian; Peart, Mario; Kenney, Mike
Cc: Houston, Bob; Lindgren, Sharon; Blum, Kathy; Smith, Dawn Renee; Kroeger, Concha
Subject: communication with the Ombudsman regarding Nikko Jenkins

Hello. Bob Houston has asked me to have you search your files for communication with the Ombudsman regarding Nikko Jenkins. Please send me copies of any correspondence or memos in your files to or from the Ombudsman regarding Inmate Jenkins from March 1, 2008 to September 6, 2012. I am sending to the Wardens of the facilities where he was incarcerated, NCYF, TSCI, LCC, and OCC.

Thanks.

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

From: Kenney, Mike
Sent: Thursday, November 07, 2013 9:37 AM
To: Smith, Dawn Renee; Spindler, Robin; Kroeger, Concha
Subject: Kenney Plan
Attachments: Kenney Plan 11-132.docx

I expanded a little in the Jenkin's section.... We can delete. I know not to talk about Jenkins per se, but thought they may be edified to know the actual process for *any* civil commitment. They will be able to figure it out quite easily if they want.

*Michael L. Kenney, Director
Nebraska Department of Correctional Services
mike.kenney@nebraska.gov
402-479-5710*

Timeline:

- **News Conference** – hold news conference November 25, 2013, at 0830; Invitation only to those who have already requested interviews with the condition of providing for other news outlets.
- **Senator Meetings** – meet with senators prior to or at beginning of 2014 legislative session and/or as requested prior.

Draft Narrative for News Conference:

Since Governor Heineman appointed me director of the Nebraska Department of Correctional Services I have been working with deputy directors and other department heads to familiarize myself with all aspects of the agency.

As I said recently to the state budget division, one of my priorities is the crowding of our facilities. Prior to my appointment, the legislature approved the update of the NDCS master plan. That effort is underway and will provide a number of recommendations to address crowding; however, it is not scheduled to be complete until May 2014. Until those long-term solutions are identified, the NDCS administration is working to develop short-term solutions. Those have not been finalized at this time. When I have more information to share on this I will let you know.

Over the last several months there have been several incidents that have drawn public attention. Some have taken these incidents to draw conclusions that there are system failures with the management of the department. Such a position is oversimplified and perhaps impulsive reaction to a series of single incidents. There is an inherent risk with this, and any inmate population. Transforming human behavior is one of the most profound challenges any system or individual can undertake. When it is accomplished at all, it is through patient, deliberate and incremental change. It is impossible to eliminate all risk if we are to, at the same time, expose inmates to increased opportunities to make choices. Making good choices takes practice and some failure is going to occur. The department's goal is to mitigate the severity of those poor choices to an acceptable level with public safety being the paramount priority.

Key Issues/Anticipated Area of Questions:

- **Crowding**
 - NDCS recidivism rate remains at 26% and is in the lowest third in the country
 - All 10 facilities, CSI, Staff Training Academy and Central Office are fully accredited
 - Continue to operate safe facilities at 150% of design capacity
 - Inmate placement decisions are made via validated classification instrument
 - Master Plan update is in process and will include recommendations for long-term solutions to crowding
 - Short-term solutions include:

- Utilization of county jails for inmates who are within up to 12-18 months from TRD, are less violent and have fewer treatment needs
- **Budget**
 - Deficit request reflects shortfall attributable to rising medical and food costs and increased number of inmates
- **Good time**
 - Very hot topic right now – NDCS' position on good time is based on population impact and the ability to incentivize appropriate behavior
 - NDCS held public hearing to increase the maximum amount of good time that can be withheld from an inmate for institutional misconduct
- **Community Corrections**
 - More than XXX inmates pass through the community centers in a year
 - Approximately three percent walk away and approximately X percent engage in misconduct resulting in return to a secure facility
 - Mental health staff have begun reassessing community custody inmates with violent offenses to determine if current placement is still appropriate
 - The reassessment will expand to parole as possible
 - Reduction in contraband (drugs, cell phones, etc.) and violations resulting in return to secure facilities has been seen with the termination of the inmate van driver program
 - Closer scrutiny and review of inmate passes, which includes reduced amount of time away from the facility and supervision
 - Utilizing electronic monitoring on a random basis for 10 inmates daily to monitor inmate movement
- **Mental Health**
 - A review of the status and present stability of all inmates assigned to community correctional facilities, RFP or have been paroled – who have significant violence within the past five years and / or have been recommended for treatment for violent behavior
 - Creating a team to review all mentally ill and violent inmates nearing TRD for dangerousness
 - Requesting technical assistance funding from the National Institute of Corrections to conduct an objective, systematic review of NDCS' mental health department, to include programming and efficiencies
 - **ADDITIONAL FUNDING NEEDED?**
- **Jenkins**
 - Cannot speak to specifics of any inmate's mental health diagnosis or treatment per state statute and HIPPA. There may be some confusion about the state's ability to have someone committed to an institution because they present a danger to themselves or others. The procedure for civil commitment for any person, requires the subject to be

mentally ill. The person may have a personality disorder or even a background of violence but if the person is not determined to be mentally ill, that person cannot be placed into custody as a civil commitment – the Department would have no legal standing to detain the subject in such case.

- **Questions on Bob Houston and/or his retirement**
 - Bob is a committed, dedicated and experienced correctional administrator who did everything in his judgment to manage the increasing crowding and maintain public safety
 - No question his primary intent was public safety
 - NDCS has long-enjoyed visionary leadership – Bob is no exception – and I look forward to continuing to build upon that foundation to make this department stronger and our communities safer
 - There were programming and initiatives already in motion and we are implementing and expanding on those

From: Kenney, Mike
Sent: Tuesday, November 19, 2013 12:18 PM
To: Kroeger, Concha
Subject: Fwd: Sent it both ways by the document and just typed the Information in the body of this e-mail.
Attachments: 11-19-13 Notes from Mock Press Conference.docx

Sent from my Verizon Wireless Tablet

----- Original message -----

Subject: Fwd: Sent it both ways by the document and just typed the information in the body of this e-mail.
 From: "Wayne, Larry" <Larry.Wayne@nebraska.gov>
 To: "Kenney, Mike" <mike.kenney@nebraska.gov>, "Smith, Dawn Renee" <DawnRenee.Smith@nebraska.gov>
 Cc:

Here's my notes from yesterday's mock interview.

Sent from my Verizon Wireless 4G LTE DROID

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

Subject: Sent it both ways by the document and just typed the information in the body of this e-mail.
 From: "Young, Konda" <Konda.Young@nebraska.gov>
 To: "Wayne, Larry" <Larry.Wayne@nebraska.gov>
 CC:

Notes from Mock Press Conference

- Don't Ask: "Does that Answer your question?"
- Don't Say: "It's true a former employee alleged programming recommendations were changed." Simply talk about programming being constantly reviewed and evaluated to assess effectiveness. WE will always look for greater efficiencies in how we use tax payer resources."
- Nikko Jenkins

Don't get into talking about Jenkins. Simply answer the question with a policy statement indicating we are treating and assessing all inmates, particularly those who are at higher risk for dangerousness.

- Keep coming back to the notion that 80% of our admissions are out within 3 years. The treatment needs for those individuals are being addressed primarily at lower custody settings or in the community. Inmates with greater treatment needs or who represent higher risk and have longer sentences are being addressed in line with those specific needs.
- Individuals with drug offenses in prison are often times not serving their first adult felony incarceration. Many have extensive backgrounds in drug sales and distribution.
- Treatment recommendations may be reviewed in line with an inmate's sentence structure. If there is insufficient time on the inmate's sentence for residential treatment for example, non-residential treatment will be provided. It is believed some treatment is better than none for an inmates serving short sentences.

Konda G. Young, Interstate Compact Coordinator
Nebraska Department of Corrections
Programs and Community Services
P.O. Box 94661
Lincoln, NE 68509-4661

Office: (402) 479-5753
Fax: (402) 479-5623

From: Kenney, Mike
Sent: Wednesday, January 08, 2014 9:28 AM
To: Smith, Dawn Renee
Cc: Kohl, Randy
Subject: FW: Article

I believe it was because, and I have no specific proof this happened, Jenkins signed every consent to disclosure they placed in front of him.

Michael L. Kenney, Director
Nebraska Department of Correctional Services
mike.kenney@nebraska.gov
402-479-5710

From: Kohl, Randy
Sent: Wednesday, January 08, 2014 9:22 AM
To: Green, George
Cc: Kenney, Mike; White, Cameron
Subject: FW: Article

George, how can Lux share all the Inmate's mental health information with the press? Check out the end of the article in the hyperlink.

Randy T. Kohl, M.D.

Deputy Director, Health Services
State of NE Dept of Correctional Svcs

From: White, Cameron
Sent: Wednesday, January 08, 2014 7:21 AM
To: Kohl, Randy; Weilage, Mark; Wetzal, Martin; Jack, Cheryl
Subject: Article

FYI. Detailed article.

<http://www.omaha.com/article/20140107/NEWS/140109219/1685#report-warnings-about-nikko-jenkins-went-unheeded-by-nebraska-department-of-corrections>

Cameron S. White, Ph.D.
Behavioral Health Administrator, NDCS
Acting Chief Operating Officer, Health Services
Licensed Psychologist
Licensed Nursing Home Administrator

Phone: 402-479-5971
Facsimile: 402-479-5679
Email: cameron.white@nebraska.gov

From: Mike Kenney <mikekenney@neb.rr.com>
Sent: Tuesday, January 28, 2014 9:04 PM
To: Kenney, Mike
Subject: Interview Prep
Attachments: Interview Prep.docx

Interview Prep

Things I've changed since Sept:

- Stopped sending mid-level sex offenders to community for treatment
- Started to ID Type I offenders presently community and have face-to-face assessment to determine stability and progress
- Initiated the move of Anger management from community back inside secure facilities
- Transferring more inmates to WEC to ease crowded conditions
- Stopping use of DCS beds to house Federal inmates (notify BOP 1st)
- Seeking deficit to add 59 FTE's to augment security and treatment needs
- Have met with members of Judiciary Committee to seek their support of WEC usage
- Invested significant time in the Master Plan for development of a blueprint for the future
- Have changed the Good Time rule to double the amount of time to be taken for violence in prison while serving their sentence
- Have worked to replace some key positions that retired / resigned in the last 90 days. (HR Administrator, COO Medical, Planning & Research Team Leaders)
- Have worked closely with Governor's staff to prepare for the current legislative session
- Have visited all DCS sites to familiarize myself with as many key staff and programs as possible.
- Have met with national Director's group to share strategies for the future and determine best practices for the future of NDCS

Mental Health / Ombudsman's report:

I have discussed the report with Marshall Lux and am meeting with him this week to scrutinize some of the parts of that report that I think were misleading, or at least seems to lack accurate information. I have prepared a letter providing a more comprehensive articulation of the mental health programs we provide and am sending a copy to all members of the judiciary committee.

Dr. Thomas White, a nationally recognized expert indicated NDCS has done a remarkable job of bringing our mental programs up to snuff with nationally recognized standards of performance.

Nikko Jenkins

This is a legal matter and by policy I am prevented from commenting on that specific subject.

Civil Commitment Process

I can explain the general components of what a civil commitment entails and how NDCS works within that law to effect public safety:

Mentally Ill and dangerous - defined

Standards are quite precise and cannot be assumed or conjectured by non-professionals

Not all experts agree on who meets these criteria – there is some inconsistency

NDCS has followed all legal requirements pertaining to all such releases - there have been no exceptions

From: Kenney, Mike
Sent: Monday, March 10, 2014 7:57 AM
To: Gage, Brian; Sabatka-Rine, Diane; Peart, Mario; Mahr, Ryan; Skrobeckl, Denise; Lewien, Barb
Cc: Hopkins, Frank
Subject: FW: Restrictive Housing
Attachments: Restrictive Housing.docx

Please see the note from Bob and go over the attachment. These 13 Restrictive Housing Guidelines are sanctioned by ASCA. UNO is preparing a 3-day course for correctional managers to cover this subject matter. It looks pretty fundamental to me. However, **you are the practitioners**. Please look over this brief course description / outline and make any suggested changes that come to mind as folks who work with it every day.

Key Q: *Is there anything missing in the course outline that should be in there?*

I'm not asking for a comprehensive review of this, just a quick look- I'd like any suggestions / observations by Wednesday at noon.

Thank you.

*Michael L. Kenney, Director
Nebraska Department of Correctional Services
mike.kenney@nebraska.gov
402-479-5710*

From: Bob Houston [<mailto:rbouston@unomaha.edu>]
Sent: Monday, March 10, 2014 7:44 AM
To: Kenney, Mike; Mark Foxall (mark.foxall@douglascounty-ne.gov)
Subject: Restrictive Housing

Mike and Mark.....please note and comment on a draft outline of a three(3) day restrictive housing course that follow's ASCA's principles,

Thanks!

Robert P. Houston
Senior Community Research Associate
School of Criminology and Criminal Justice
College of Public Affairs and Community Service
University of Nebraska at Omaha
CPACS 218
6001 Dodge St.
Omaha, Nebraska 68182
Ph 402-554-2716

Fax 402-554-2326

DRAFT

Restrictive Housing

Developing a Curriculum

University of Nebraska-Omaha

Purpose: Create Best Practices Suitable for Replication: advance the thirteen (13) ASCA principles governing restrictive housing through a peer interaction course that focuses on classification, mental health, research, programming, transition confinement, and specialized personnel training.

Facilitator:

Trainers:

Eight (8) Participants: Practitioners responsible for operational or administrative oversight of restrictive housing unit(s).

Program: Participants will prepare a training module from the thirteen (13) principles advanced by the Association of State Correctional Administrators (ASCA). The principles are both separate and combined to clearly establish a framework for discussion and policy/practice development.

Monday

Legal Issues

Mental Health

Research

Principles of Best Correctional Practices

Testimonials by Directors of Corrections

Association of State Correctional Administrators Resolution #24

Restrictive Status Housing Policy Guidelines

Tuesday

- 0800 Principles 1, 2, 12 Provide a process, a separate review for decisions to place an offender in restrictive status housing. Provide periodic classification reviews of offenders in restrictive status housing every 180 days or less. Conduct an objective review of all offenders in restrictive status housing by persons independent of the placement authority to determine the offenders' need for continued placement in restrictive status housing.
- 0930 Break
- 0945 Principles 3, 6 Provide in-person mental health assessments, by trained personnel within 72 hours of an offender being placed in restrictive status housing and periodic mental health assessments thereafter including an appropriate mental health treatment plan. Provide appropriate access to medical and mental health staff and services.
- 1100 Principles 4, 5 Provide structured progressive levels that include increased privileges as an incentive for positive behavior and/or program participation. Determine an offender's length of stay in restrictive housing status on the nature and level of the threat to the safety and orderly operation of general population as well as program participation, rule compliance and the recommendation of the person(s) assigned to conduct the classification review as opposed to strictly held time periods.
- 1230 Lunch

- 1:45 Principle 7 Provide access to visiting opportunities
- 2:30 Break
- 2:45 Principle 8, 9 Provide appropriate exercise opportunities.
Provide the ability to maintain proper hygiene
- 4:00 Assessment of Day

Wednesday

- 0800 Principle 10 Provide program opportunities appropriate to support transition back to a general population setting or to the community.
- 0930 Break
- 0945 Principle 11 Collect sufficient data to assess the effectiveness of implementation of these guiding principles
- 1030 Break
- 1045 Principle 13 Require that all staff assigned to work in restrictive status housing units receive appropriate training in managing offenders on restrictive status housing status.
- Noon Lunch
- 1:15 Policy Implications
- 3:00 End of Restrictive Housing Seminar

From: Britten, Fred
Sent: Tuesday, March 11, 2014 4:24 PM
To: Kenney, Mike
Cc: Britten, Fred
Subject: FW: Restrictive Housing
Attachments: Restrictive Housing.docx

Mr. Director Kenney Sir, sometime last year several of us (including your predecessor) met to discuss the very principles referenced below and attached. We reviewed each principle individually and discussed where NDCS is relevant to meeting those principles. We determined that NDCS complies with most of the principles already. However, there were a couple of principles that would require some changes for NDCS to become compliant.

The draft curriculum appears to be long on philosophy and maybe a little short on practical application, which is really the meat and potatoes of the challenge we face. As you know, every Agency and every Facility is so different when it comes to available resources and physical plant. As such, the feasibility of the implementation/application of the principles will vary.

It doesn't appear that the principles are so complex that it would require three days of training to share/discuss these concepts. I would anticipate that many states already utilize several of the principles. Three days seems like a significant time commitment. I think we all understand the importance of the Restrictive Housing issue and the need for a consistent approach to same.

I'm not exactly sure where I'm going with this, but I'm sure I have a point to make....if only I could figure out what it is. I just want to make sure that in our efforts to address Restrictive Housing we don't create these " Principles " to live by and then not have the resources to actually live by them. There is no doubt in my mind that Restrictive Housing is an issue that must be addressed with a sense of urgency but also with common sense and practicality.

Maybe this training is a step in the right direction but the emphasis should be on the how more than the philosophical why.

OK, I think I used a lot of words but I'm not sure I actually said anything.

Thanks for listening.

Fred Britten

Warden
 Diagnostic & Evaluation Center
 402-479-6339
fred.britten@nebraska.gov

From: Kenney, Mike
Sent: Monday, March 10, 2014 7:57 AM
To: Gage, Brian; Sabatka-Rine, Diane; Peart, Mario; Mahr, Ryan; Skrobecki, Denise; Lewien, Barb
Cc: Hopkins, Frank
Subject: FW: Restrictive Housing

Please see the note from Bob and go over the attachment. These 13 Restrictive Housing Guidelines are sanctioned by ASCA. UNO is preparing a 3-day course for correctional managers to cover this subject matter. It looks pretty

fundamental to me. However, **you are the practitioners**. Please look over this brief course description / outline and make any suggested changes that come to mind as folks who work with it every day.

Key Q: *Is there anything missing in the course outline that should be in there?*

I'm not asking for a comprehensive review of this, just a quick look- I'd like any suggestions / observations by Wednesday at noon.

Thank you.

*Michael L. Kenney, Director
Nebraska Department of Correctional Services
mike.kenney@nebraska.gov
402-479-5710*

From: Bob Houston [<mailto:rhouston@unomaha.edu>]
Sent: Monday, March 10, 2014 7:44 AM
To: Kenney, Mike; Mark Foxall (mark.foxall@douglascounty-ne.gov)
Subject: Restrictive Housing

Mike and Mark.....please note and comment on a draft outline of a three(3) day restrictive housing course that follow's ASCA's principles.

Thanks!

Robert P. Houston
Senior Community Research Associate
School of Criminology and Criminal Justice
College of Public Affairs and Community Service
University of Nebraska at Omaha
CPACS 218
6001 Dodge St.
Omaha, Nebraska 68182
Ph 402-554-2716

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STATE OF NEBRASKA

DEPARTMENT OF CORRECTIONAL SERVICES

Michael L. Kenney
Director



Dave Heinemann
Governor

March 31, 2014

Pauline Brennan, Ph.D.
Benjamin Steiner, Ph.D.
School of Criminology and Criminal Justice
University of Nebraska, Omaha

Dear Drs. Brennan and Steiner,

I am writing today in support of your proposed study, "Examining the Use and Impact of Disciplinary Segregation within and across State Prisons." The Nebraska Department of Correctional Services (NDCS) utilizes segregation, referred to as restrictive housing, when necessary to protect inmates and/or the security of the institution and is very interested in research on the effectiveness and impact of restrictive housing. If this project moves forward and receives funding and IRB approval, NDCS is prepared to supply UNO with NDCS data relating to restrictive housing and its effects on inmates.

NDCS has participated in several studies on this subject in the past and welcomes the opportunity to measure the progress in implementing past recommendations as well as identifying where further improvements can be made. The involvement of the Iowa Department of Corrections in this project is also welcomed and I look forward to being able to compare data and policy across jurisdictions. I am confident that this project will benefit NDCS by helping to inform our daily operational practices and policies regarding restrictive housing and feel that other jurisdictions will also benefit from this research. If you have any questions about the project or NDCS' participation please feel free to contact me by phone at 402-479-5903 or email at mike.kenney@nebraska.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "Mike Kenney".

Michael L. Kenney
Director, NDCS

cc: Abby Vandenberg, Research Manager
Jeffrey Beaty, Director of Planning, Research and Accreditation

From: Kenney, Mike
Sent: Saturday, April 19, 2014 11:13 AM
To: Smith, Dawn Renee
Subject: Fwd: Info from Mary Earley

Fyi... I will let LB know this on monday.

Sent from my Verizon Wireless 4G LTE smartphone

----- Original message -----

From: "Hanson, Traci"
Date: 04/18/2014 1:56 PM (GMT-07:00)
To: "Kenney, Mike"
Subject: Info from Mary Earley

Mike,

I got the information you were needing about Nikko Jenkins.

Mary said that James Davis has been there 3 times that she knows of and that she has not heard anything from James since the last time he was there.

Also she said that the inmates get 1 hour recreational time a day and that they can make as many calls as they want within that hour. She said that Nikko averages about 3 calls a day for about 45 minutes out of his 1 hour recreational time.

Let me know if you need anything else.

Thank you,

Traci Hanson

Administrative Assistant to the Director
Nebraska Department of Correctional Services
PO Box 94661, Lincoln, NE 68509-4661
Phone: (402) 479-5903
traci.hanson@nebraska.gov

From: Kenney, Mike
Sent: Tuesday, May 13, 2014 10:31 AM
To: Wayne, Larry; Smith, Dawn Renee
Cc: Cruickshank, Rich; West, Charles; Green, George
Subject: RE: News of Interest

This is why you are a rock star Larry. Perfect! Thanks all.

Michael L. Kenney, Director
Nebraska Department of Correctional Services
mike.kenney@nebraska.gov
 402-479-5710

From: Wayne, Larry
Sent: Tuesday, May 13, 2014 10:28 AM
To: Kenney, Mike; Smith, Dawn Renee
Cc: Cruickshank, Rich; West, Charles; Green, George
Subject: RE: News of Interest

OK; here's what over communicate looks like operationally. On the rare occasions when we issue an inmate a pass to attend court, we will have first notified the county attorney's office, the judge, their bailiff and the county sheriff. The contact will be both by phone and with a follow up email to each entity indicating we spoke with them on the date and time and agreed the inmate's presence on pass at the court proceeding should take place.

In this manner we will create have a record of agreement and approval for the inmate in attendance in court should folks later question this.

Thanks and let me know if questions arise-

From: Kenney, Mike
Sent: Tuesday, May 13, 2014 8:02 AM
To: Wayne, Larry; Smith, Dawn Renee
Cc: Cruickshank, Rich
Subject: RE: News of Interest

I got a call from the Governor himself about this. We will discuss but the basic message is to OVER communicate in these circumstances – call and email all parties.

Michael L. Kenney, Director
Nebraska Department of Correctional Services
mike.kenney@nebraska.gov
 402-479-5710

From: Wayne, Larry
Sent: Tuesday, May 13, 2014 7:53 AM
To: Smith, Dawn Renee
Cc: Kenney, Mike; Cruickshank, Rich
Subject: RE: News of Interest

Rich: It appears the judge's and prosecutor's chief concerns are we didn't also notify the sheriff's office. If we continue to let inmates have passes to attend hearings (which I do not have a problem with) I believe it would be advisable to notify the sheriff's office in addition to the court bailiff, as was done in this instance. Mike, if you are OK with this we'll proceed in this fashion.

From: Smith, Dawn Renee
Sent: Monday, May 12, 2014 4:46 PM
Subject: News of Interest

Published May 10, 2014

Published Saturday May 10, 2014

Inmate in Lincoln let out of prison for Omaha court trip with his girlfriend

By [Todd Cooper](#) / World-Herald staff writers

A prisoner walks into a courtroom — dressed in a crisp cream suit and matching tie.

Sounds like the start of a joke, right?

For Douglas County prosecutors and court officials this week, there was no punchline. Or if there was, it wasn't funny.

An Omaha man — convicted in April 2011 of shooting and injuring a bouncer who had kicked him out of the nightclub The 20s in Omaha — is serving a sentence that is supposed to keep him in prison until at least 2017.

Imagine the surprise of prosecutors and the judge when that man, Quentin D. Jackson, walked into court Thursday in street clothes to attend a hearing to try to get his conviction set aside.

Inmates typically "appear" via telephone for such postconviction relief hearings. On rare occasions, they are taken to court in handcuffs and leg chains and under the watch of corrections officials.

In this case, a girlfriend picked up Jackson at the door of the Lincoln Correctional Center and took him to the Douglas County Courthouse.

When the judge's bailiff went into court to set up the telephone that would be used in the hearing, he spotted Jackson, 38, in the back of the courtroom, his hair coiffed and his shoes shined.

Bailiff Scott Srb asked Jackson how he was out. Jackson told Srb he had received a "good points pass" because he is an "exemplary inmate."

Prosecutors weren't pleased.

"This is insane," said Katie Benson, a deputy Douglas County attorney who is opposing Jackson's motion to set aside his conviction.

Corrections spokeswoman Dawn-Renee Smith said Jackson's release was part of a re-entry program for inmates who are within three years of their release date. She said inmates must qualify for the passes, which typically are for only four to six hours.

Jackson's temporary release — he returned to the Lincoln Correctional Center later that day — comes on the heels of numerous questions about corrections officials' past release of prisoners.

State officials came under fire, and then-director Bob Houston retired, after controversies over:

» An inmate driving program that allowed a prisoner to drive a corrections van. In June, that prisoner, Jeremy Dobbe, drove nearly 90 mph, crossed the center line and ran into a car, killing Joyce Meeks of Lincoln.

» Weekend furloughs given to Jemaine Lucas, another shooter with a violent history. Lucas, a gang member, was on furlough when he was shot and killed in September 2012 after Omaha police responding to a shots-fired call saw him lunge for a gun.

» The July 30 release of Nikko Jenkins. Jenkins was released after serving 10½ years despite numerous fights, outbursts and bizarre behavior while in prison. Within three weeks of his release, Jenkins killed four Omahans. He is awaiting sentencing.

District Judge Peter Bataillon has presided over the Jenkins case. He is also the judge presiding over Jackson's case.

The judge declined to comment on Jackson's appeal. Jackson is claiming ineffective assistance of counsel, among other things.

Benson argues that Jackson missed his one-year deadline in which to file the postconviction appeal.

Bataillon was ready to hear evidence on that issue Thursday. Bataillon, however, said he was shocked to find Jackson in court, unattended by deputies.

The only person with Jackson: his girlfriend.

The judge said corrections officials didn't make it clear that Jackson would be there on his own. They also didn't alert Douglas County sheriff's deputies, who provide security for the courthouse, Bataillon said.

Smith said she understood that a case manager had told the judge's staff that it was a possibility that Jackson would appear in court.

She said the Corrections Department reviews inmates' eligibility for re-entry based on how close they are to release, their behavior in prison and their underlying crime.

Jackson was initially charged with attempted murder in the nightclub incident. The bouncer he shot told police that Jackson was a regular who began acting erratically in the bar.

The bouncer kicked out Jackson. Jackson returned in a car and fired on the bouncer as he stood outside the bar.

The bouncer survived. Prosecutors later reduced Jackson's charge to second-degree assault and weapon use. Jackson, who had a previous robbery and weapons conviction, pleaded guilty to the charges and was sentenced to 14 to 15 years in prison.

With credit for time served, Smith said, Jackson is eligible for release in 2017.

Bataillon, who was not the judge who sentenced Jackson, said he now wonders what to tell defendants in court about their actual release date.

"I have no idea," Bataillon said. "I guess I'll say you're eligible for parole on this date, but you could be released at any time."

The good news, he said, is that Jackson was on his best behavior.

That was little comfort to prosecutors.

Douglas County Attorney Don Kleine said his prosecutors often have to face defendants with violent histories or propensities. They shouldn't have to do so, he said, without any security present.

Smith said the inmate passes are supposed to be used specifically to further the prisoners' integration into society — for activities such as job searches, family counseling, substance abuse treatment, mental health therapy.

Jackson's trip to court — to try to vacate a conviction — could help toward the reintegration goal, she said.

JournalStar.com

Penitentiary inmate dies after injury in cell

MAY 09, 2014 6:15 PM • BY CATHARINE HUDDLE / LINCOLN JOURNAL STAR

An 80-year-old man serving time for driving drunk and without a license died April 26 after an injury at the Nebraska State Penitentiary.

Charles McDaniel was found unresponsive in his cell on April 22, state Department of Correctional Services spokeswoman Dawn-Renee Smith confirmed on Friday. He was taken to the skilled nursing unit at the prison and then by ambulance to Bryan West Campus, where he died on April 26, she said.

"I can confirm they are investigating," Smith said. "He did go to Bryan West and did pass away from an injury, it appears."

She said she couldn't talk about the nature of the injury, but a letter from a penitentiary inmate says McDaniel's cellmate hit him in the head with a cane. According to the letter, McDaniel had asked to be moved or for the cellmate to be moved but was told that was not possible because there was no room to move either of them.

Smith said overcrowding was not the issue.

"No, inmates have been doubled-bunked at the penitentiary for decades. ... Crowding just really doesn't play a role in this," she said. "There are a lot of requests. An inmate says, 'I don't like my cellmate; I want to move someplace else.'

"We have to look at those, but we can't just be moving inmates all over the place. But if there was a problem, any kind of safety issue or anything else, we would deal with it."

The penitentiary, designed to hold 718 men, has 1,311, putting it at 182 percent of capacity.

During the past legislative session, lawmakers approved forming a special investigative committee to look into the state's prison system, including overcrowding.

McDaniel's death is being investigated by the Nebraska State Patrol and will be looked into by a grand jury, as is required by Nebraska law whenever someone dies in custody. State Patrol spokeswoman Deb Collins confirmed the patrol is investigating but had no further comment.

In January 2011, a Lancaster County district judge sent McDaniel, then 77, to prison after he drove drunk through the Sunken Gardens parking lot and crashed his car. His license already had been revoked.

"You're probably pretty lucky someone's not dead or injured as a result of that," Judge Karen Flowers told him then.

An officer had tried to stop him for driving erratically near Ninth and A streets, but McDaniel took off and ended up running his Mercury into Sunken Gardens and crashing into two trees, a bush and several posts. He fled, and was arrested soon after.

McDaniel pleaded guilty to driving on a revoked license, fleeing to avoid arrest and driving under the influence. Defense attorney Liz Foster told Flowers he seemed remorseful and realized the damage he could have caused. She asked the judge to consider his age, saying he didn't want to die in prison.

McDaniel had served at least three other prison sentences for driving without a license and possession of marijuana.

"The message is you can't drive again," Flowers said in 2011, when she sentenced him to 10 to 20 years.

McDaniel would have been eligible for parole in December 2015, according to prison records.

Dawn-Renee Smith

Legislative & Public Information Coordinator
Nebraska Department of Correctional Services

PO Box 94661

Lincoln, NE 68509-4661

402.479.5713

Dawnrenee.smith@nebraska.gov

At the Nebraska Department of Correctional Services diversity is imperative and integral to our mission. Our Department is committed to an inclusive environment where differences are accepted, valued, and celebrated to foster teamwork and safety.

The information contained in this e-mail message and any attachments may be privileged and confidential. If the reader of this message is not the intended recipient or an agent responsible for delivering it to the intended recipient, you are hereby notified that any review, dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please notify the sender immediately by replying to this e-mail and delete the message and any attachments from your computer.

From: Hopkins, Frank
Sent: Wednesday, June 04, 2014 3:34 PM
To: Kenney, Mike; Spindler, Robin; Smith, Dawn Renee; Foster, James
Subject: Fw: Order of District Court of Douglas County orders Nikko Jenkins to Lincoln Regional Center
Attachments: 20140604141646039.pdf

FYI; also, all notifications have been made. We will follow the court order when contacted by LRC. Thank you.

Sent via DroidX2 on Verizon Wireless™

-----Original message-----

From: "Green, George" <George.Green@nebraska.gov>
To: "Hopkins, Frank" <Frank.Hopkins@nebraska.gov>
Sent: Wed, Jun 4, 2014 19:29:15 GMT+00:00
Subject: Order of District Court of Douglas County orders Nikko Jenkins to Lincoln Regional Center

Frank: Please call me if you have a minute. Thanks

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

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

From: dcscopiers@nebraska.gov [<mailto:dcscopiers@nebraska.gov>]
Sent: Wednesday, June 04, 2014 1:17 PM
To: Green, George; Blum, Kathy; Lindgren, Sharon
Subject: Message from "RNP0026736FC715"

This E-mail was sent from "RNP0026736FC715" (MP C4503).

Scan Date: 06.04.2014 14:16:45 (-0400)
Queries to: dcscopiers@nebraska.gov



06/04/2014 12:40

(FAX)

P.001/003

The District Court of Nebraska

FOURTH JUDICIAL DISTRICT
JUDGE PETER O. BATAILLON
HALL OF JUSTICE
OMAHA, NEBRASKA 68183
402-444-7007
FAX: 402-996-8158



SCOTT SRB
CLERK

ANTONETTE SOHNCKENBERGER, RPR
COURT REPORTER

FACIMILE TRANSMISSION

DATE: 6.4.14

RE: St. v. NIKKO JENKINS (CR 13-2768, CR 13-2769)

TO: William Gibson / Michael L Kenney

FAX NUMBER: 402-

/ 402-479-5623

FROM FAX NUMBER: 402-996-8158

PAGES SENT INCLUDING COVER PAGE: 3

MESSAGE:

IF YOU HAVE ANY QUESTIONS OR IF THE FAX WAS NOT COMPLETE,
PLEASE CONTACT SCOTT SRB AT: 402-444-7007.

IN THE DISTRICT COURT OF DOUGLAS COUNTY, NEBRASKA

STATE OF NEBRASKA,)
)
 Plaintiff,)
)
 vs.)
)
 NIKKO A. JENKINS,)
)
 Defendant.)

CR 13-2768
CR 13-2769

AMENDED ORDER

This matter came on for hearing on June 2, 2014, on the Defendant's Motion to determine if the Defendant is competent to proceed with the sentencing phase of this matter. Thomas Riley, Scott Sladek, and Thomas Wakeley appeared for the Defendant, and Donald Kleinc, Brenda Beadle, and Nissa Jones appeared for the State of Nebraska.

Evidence was adduced by the Defendant, which was the May 7, 2014 Re-evaluation report of the Defendant by Dr. Bruce Gutnik, and arguments received.

Based upon this evidence and the recent self-mutilation by the Defendant, this Court finds that the Defendant should be transported immediately, upon an appropriate bed being available at the Lincoln Regional Center, to the Lincoln Regional Center for evaluation by the staff at the Lincoln Regional Center as to whether he is competent to assist in the sentencing phase of this matter and to provide appropriate treatment if necessary. Defendant shall remain at the Lincoln Regional Center until further order of this Court.

If Defendant is not transported to the Lincoln Regional Center within ten (10) days of the original Order of June 2, 2014, the Chief Executive Officer of the Lincoln Regional Center shall advise this Court immediately of the reason for the delay.

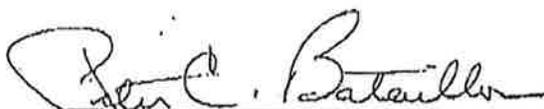
The Court has been advised by the Chief Executive Officer of the Lincoln Regional Center that the preferred transportation of the Defendant from the Lincoln Correction Center to the Lincoln Regional Center will be done at their

direction. As such, it shall be the responsibility of the Lincoln Regional Center to arrange the transportation of the Defendant.

IT IS SO ORDERED.

Dated this 3rd day of June, 2014.

BY THE COURT:



Hon. Peter C. Batallon

cc: Donald Kleine, Esq., Brenda Boadle, Esq., Nissa Jones, Esq.
Tom Riley, Esq., Scott Sladek, Esq., Thomas Wakeley, Esq.
William R. Gibson, Lincoln Regional Center
Douglas County Sheriff

Michael L. Kennay, Director of Nebraska Dept. of Corrections

From: Morris, Kate
Sent: Friday, March 27, 2009 9:26 AM
To: Spindler, Robin; Houston, Bob; King, Steven; Hanson, Doug; Wayne, Larry; Richard, Rex
Cc: Nemec, Connie
Subject: design capacity, stress capacity, rated capacity, and operational capacity
Attachments: crowding ratios and percents and capacities.xls

Importance: High

Larry Bare had indicated when we met with him on the Work Ethic Camp last week that he was interested in a different way to compute 'capacity', one that took into account the type of inmates and the programs at the institution, rather than using only the 'Design Capacity' to determine crowding.

Steve King, Doug Hanson & I discussed this, and I have prepared **two tables for discussion purposes**.

I. The first table, or design capacity table, lists the design capacities, the stress capacities, and the population as we have always presented it, with the exception that I have included the WEC design capacity in the totals, and have included the entire WEC population against that design capacity, and in calculating the totals. Then I have subtracted out the Probationers to get a DCS incarcerated total.

II. The second table is based upon the Carter Goble Lee Strategic Capital Facilities Master Plan (May 2006) where they identified and used two additional crowding categories –

a) the 'CGL Rated Capacity' which is an independent assessment by the authors of what an appropriate capacity of each facility should be, based upon physical plant elements, plumbing facilities, sleeping and dayroom areas, etc, that would allow the facility to still meet American Correctional Association (ACA) Accreditation Standards, and

b) the 'Operational Capacity' which is the total population headcount (as determined by Carter Goble Lee in 2006 after discussions with each facility) that can be accommodated long term without major capital project initiatives.

Both of these Carter Goble Lee capacity factors have the advantage that they were prepared by an independent, experienced nationally recognized Public Facility Planning, Design, & Program Management company. (see their website for more information on the company <http://www.cartergoblelee.com/>).

The 'CGL Rated Capacity' is the ideal maximum capacity

The Operational Capacity is a research based capacity that identifies when the facility is stressed or stretched to capacity **when that population is considered to be long term.**

The first advantage of this 'operational capacity' measurement is that it allows the Governor and Legislature to have a level of comfort with the basis of that operational capacity number, knowing that custody levels and programs along with brick and mortar and headcounts were considered by an independent contractor in the determination of that measuring stick.

The second advantage of the 'operational capacity' measurement is that it gives some flexibility to the policy makers to determine what 'long term' is, and at what point new facilities or other executive actions should be considered.

A decision point for action could be defined as the population staying at or only slightly over that number (the 098 100% mark) - (100-105%?) for 6 months or more (pick your time period); or a shorter time period for each 5% over the 100% the population remains at. (example - at 120% the Governor may choose to act if the population hits there or remains there for 1 month--.

Or for the Governor to 'target' certain facilities/custody levels with different 'trigger points' (ex: 110% for max/med; 140% for community, etc)

This gives the flexibility and basis for both planning and appropriation for new facilities, and at what custody level, and also various potential action points if the Governor chooses, while maintaining the integrity of the measurement.

Note: the custody levels used for each facility are based on the number of inmates at each custody level in each facility as of 3/26/2009.

Kate Morris
Budget Management Analyst
Department of Correctional Services
402-479-5702
Kate.Morris@nebraska.gov



"The right thing to do never requires any subterfuge. It is always simple and direct."
Calvin Coolidge

Nebraska Department of Correctional Services

Table 1. Design Capacity & Population

Facility Name	Abbrev.	Custody Levels per facility 3/26/2009	Design Capacity	Stress Capacity (125%)	Actual Population 3/23/09	Percent of Capacity
Community Corrections Center- Lincoln	CCC-L	Community	200	250	362	181.00%
Community Corrections Center- Omaha	CCC-O	Community	90	112.5	151	167.78%
Diagnostic & Evaluation Center	DEC	Maximum	160	200	330	206.25%
Lincoln Correctional Center	LCC	45% Max	308	385	487	158.12%
		55% Med				
Nebraska Correctional Center for Women	NCCW	25% Max 27% Med 46% Min	275	343.75	279	101.45%
		2% Comm				
		33% Max 37% Med 30% Min				
Nebraska Correctional Youth Facility	NCYF	30% Min	68	85	98	144.12%
Nebraska State Penitentiary	NSP	22% Max 28% Med Min	718	897.5	1072	149.30%
Omaha Correctional Center	OCC	18% Med 82% Min	396	495	671	169.44%
Tecumseh Correctional Center	TSCI	52% Max 45% Med 3% Min	960	1200	950	98.96%
		36% pre-parole 64% Probation				
McCook Work Ethic Camp	WEC		100	125	127	127.00%
TOTAL (including probationers)	n/a		3275	4093.75	4527	138.23%
TOTAL Population Without Probationers		n/a	n/a	n/a	4446	n/a

Note: the custody levels used for each facility are based on the number of inmates at each custody level in each facility as of 3/26/2009

Nebraska Department of Correctional Services
Table 2 CGL Rated Capacity, Operational Capacity, and Population

Facility Name	Abbrev.	Custody Levels per facility 3/26/2009	CGL Rated Capacity*	Operational Capacity**	Actual Population 3/23/2009	Percent of Rated Capacity	Percent of Operational Capacity
Community Corrections Center- Lincoln	CCC-L	Community	250	250	362	144.80%	144.80%
Community Corrections Center- Omaha	CCC-O	Community	135	135	151	111.85%	111.85%
Diagnostic & Evaluation Center	DEC	Maximum 45% Max 55% Med	208	232	330	158.65%	142.24%
Lincoln Correctional Center	LCC	23% Max 27% Med 46% Min 2% Comm 33% Max 37% Med 30% Min	430	465	487	113.26%	104.73%
Nebraska Correctional Center for Women	NCCW	267	267	291	279	104.49%	95.88%
Nebraska Correctional Youth Facility	NCYF	81	81	93	98	120.99%	105.38%
Nebraska State Penitentiary	NSP	28% Med 50% Min	818	1038	1072	131.05%	103.28%
Omaha Correctional Center	OCC	18% Med 82% Min	555	635	671	120.90%	105.67%
Tecumseh Correctional Center	TSCI	52% Max 45% Med 3% Min	960	960	950	98.96%	98.96%
McCook Work Ethic Camp	WEC	38% pre-parole 64% Probation 25.5% Max 26.1% Med 29.7% Min 12.7% Comm	118	129	127	107.63%	98.45%
TOTAL (including probationers)	n/a		3822	4228	4527	118.45%	107.07%
TOTAL Population Without Probationers		n/a	n/a	n/a	4446		

* CGL Rated Capacity is an independent assessment by Carter Goble Lee in 2006 of what an appropriate capacity of each facility should be, based upon physical plant elements, plumbing facilities, sleeping and dayroom areas, etc, that would allow the facility to still meet American Correctional Association (ACA) Accreditation Standards

**Operational Capacity is the total population headcount, as determined by Carter Goble Lee in 2006 after discussions with each facility, that can be accommodated long term without major capital project initiatives.

Note: the custody levels used for each facility are based on the number of inmates at each custody level per facility as of 3/26/2009



Dave Heineman, Governor
Robert P. Houston, Director

DATE: July 1, 2009

TO: Larry Wayne, Deputy Director
Cameron White, Behavioral Health Administrator
Wayne Chandler, Clinical Programs Manager

FROM: Diane J. Sabatka-Rine, Warden
Lincoln Correctional Center

RE: Transition Confinement

On July 31, 2006, the Department piloted the Transition Program at the Nebraska State Penitentiary. This program was intended to provide male, long-term segregation inmates from throughout the Department with a formal program to assist with their reintegration to general population. The Transition Confinement Program continues at NSP and is also available to female inmates at the Nebraska Correctional Center for Women (NCCW). It has been suggested that the Transition Program be implemented at the Lincoln Correctional Center to assist long-term segregation inmates from throughout the Department successfully integrate to the Mental Health Unit. Guidelines for Transition Confinement Programs were identified in a memo from Deputy Director Hopkins. Comments relative to implementing this program at the LCC for inmates transitioning to the Mental Health Unit are included below (in red), using the content from Deputy Director Hopkins' memo (in blue) as the reference to the existing Transition Confinement Program.

As stipulated in Administrative Regulation 201.05 – Inmate Classification and Assignment – Special Management Inmates, Transition Confinement programs shall exist at designated institutions within the Department. (Currently only NSP and NCCW are designated to have such a program. Expanding this program to LCC would require the approval of the Deputy Director/Director.) The designated institutions shall develop facility procedures, consistent with Department policy, relative to the operation of these programs. In addition, written procedures will include the following provisions:

1. The Warden shall assign staff to the Transition Program to include but not limited to one Case Manager and one Mental Health staff member who shall be assigned the responsibility of the Transition Program in addition to his/her regularly assigned duties. (This could be accomplished with existing staff.)
2. When an inmate is moved to the Transition Program, he/she shall be given an orientation explaining the rules of the Transition Program which will include an explanation of the step program and incentives available in the Transition Program and will be given a copy of the written rules. (This could be accomplished with existing staff.)
3. The Case Manager assigned to the Transition Program shall prepare an updated Personalized Plan within two weeks of transfer to the program. Requirements of the existing Personalized Plan may be suspended for the duration of Transition Confinement but will be evaluated during the classification process. The Personalized Plan

LINCOLN CORRECTIONAL CENTER
P.O. Box 22800 Lincoln, Nebraska 68542-2800 Phone (402) 471-2861
An Equal Opportunity Affirmative Action Employer

shall set forth the inmate's program needs and may include, but not be limited to, mental health programs, education, work and behavioral expectations. (This could be accomplished with existing staff.)

4. Transition Program Staff will meet weekly to review the inmate's behavior, the inmate's compliance with his/her Personalized Plan, and any other factors that are relevant to the inmate's program participation. As a result of this review, the inmate's Personalized Plan may be modified. For the purposes of this program, such modifications do not require a classification action. This review must be conducted before an inmate is advanced to the next step, returned to a previous step, maintained on the current step or is recommended for removal from the Transition Program. Inmate participation in the review is at the discretion of Transition Program staff. If the inmate is not present, the Case Manager shall advise the inmate of the results of the review and note this contact in the inmate's treatment file. (This could be accomplished with existing staff.)
5. Approved Transition Program Incentives (attached) may be offered to inmates displaying appropriate behavior while assigned to Transition Confinement.

Transition Program Incentives

The following incentives may be offered to inmates displaying appropriate behavior while assigned to Transition Confinement:

- Any incentives earned through CUP program at respective institutions.
The CUP program has been replaced by the Administrative Segregation Levels Program. All inmates housed in segregation units, including those in designated program beds, participate in this levels program. As this is already available, this incentive would have minimal impact as an incentive for a Transition Confinement program for Mental Health inmates at LCC.
- Showers four times per week to increase to daily as inmates successfully complete program.
While this may create some staffing and Segregation Unit scheduling issues, this incentive could be offered as an incentive for a Transition Confinement program for Mental Health inmates at LCC.
- Phone calls two times per week increasing to daily as inmates successfully complete program.
While this may create some staffing and Segregation Unit scheduling issues, this incentive could be offered as an incentive for a Transition Confinement program for Mental Health inmates at LCC.
- Recreation yard six times per week with additional day (Sunday) incentive. Eventually given access to an exercise yard with exercise equipment.
While this may create some staffing and Segregation Unit scheduling issues, this incentive could be offered as an incentive for a Transition Confinement program for Mental Health inmates at LCC.
- Possibility of a job assignment.
This incentive is currently available at Level 5A of the Administrative Segregation Levels Program.
- Art supplies/Hobby card.
This incentive is currently available at Level 5A of the Administrative Segregation Levels Program.
- Dayroom time with others that have achieved that level.
Given the current unit staffing pattern, it would be difficult to provide this incentive for a Transition Confinement program for Mental Health inmates at LCC.
- Dining in dayroom with others that have achieved that level.
Given the current unit staffing pattern, it would be difficult to provide this incentive for a Transition Confinement program for Mental Health inmates at LCC.
- General population canteen items including access to pop machine.
Approved Canteen Items are permitted up to specified amounts as part of the Administrative Segregation Levels

Program. Given the physical plant of the LCC and the configuration of C-Unit Segregation, it would be difficult to provide access to a pop machine as an incentive for a Transition Confinement program for Mental Health inmates at LCC.

- Escorted to passes without restraints.
Given the physical plant of the LCC, it would be difficult to provide this incentive for a Transition Confinement program for Mental Health inmates at LCC.
- Additional visit session during general population visiting times (on pass and unescorted).
While this may create some staffing and Segregation Unit scheduling issues, this incentive could be offered as an incentive for a Transition Confinement program for Mental Health inmates at LCC. Due to physical plant configuration, it would not be possible for these inmates to be unescorted for said visits.
- Passes to general population activities at specific times. Example: library, dining hall.
Given the physical plant of the LCC, it would be difficult to provide this incentive for a Transition Confinement program for Mental Health inmates at LCC.
- Inmate can choose incentive with approval.
This incentive is currently available at Level 7A of the Administrative Segregation Levels Program.

Given the above, the incentives that could be applied at LCC for Mental Health inmates transitioning to the MHU/General Population would be (1) showers 4x per week with the potential to increase to daily; (2) phone calls 2x per week with the potential to increase to daily; (3) recreation yard six times per week with the potential to increase to daily; and (4) an additional visit. In reviewing available information relative to the nine (9) inmates currently in the Mental Health Program at Level E or Level F, only 2 have showered the maximum number of times permitted in the past month; only 2 have made telephone calls in the past six months, only 1 has participated in scheduled recreation yard the maximum number of times permitted and none have received visits in the last six (6) months. Given this, it is not likely that these incentives will impact the majority of this particular segment of our population.

The Transition Confinement program also includes a programming component. CALM – Thinking for Success is facilitated by trained Unit Management staff and Alternatives to Violence (AVP) is provided by outside volunteers. Given our staffing limitations, it would be difficult for Unit Management staff to facilitate this at LCC. While AVP volunteers provide their program to LCC General Population, it is doubtful that their schedule would allow them to do a second group session at LCC and finding space and supervision for such would be difficult to accomplish with our current staffing.

While a transition process may benefit mentally ill inmates transitioning from segregation to the Mental Health Unit, the existing Transition Confinement Program guidelines are not practicable for this program.

From: Spindler, Robin
Sent: Tuesday, August 04, 2009 8:11 AM
To: Farritor, Katina
Subject: FW: MHU Expansion Committee
Attachments: 7-23-09_MH_Unit_Expansion_Committee_Minutes.doc

plo

From: Jaixen, Lori <Lori.Jaixen@nebraska.gov>
Sent: Tuesday, August 04, 2009 7:59 AM
Cc: Houston, Bob <Bob.Houston@nebraska.gov>; Hopkins, Frank <Frank.Hopkins@nebraska.gov>; Spindler, Robin <Robin.Spindler@nebraska.gov>; Wayne, Larry <Larry.Wayne@nebraska.gov>; Richard, Rex <Rex.Richard@nebraska.gov>; Kohl, Randy <Randy.Kohl@nebraska.gov>; Kroeger, Concha <Concha.Kroeger@nebraska.gov>
Subject: MHU Expansion Committee

Good morning;

Attached please find the minutes from the previous MHU Expansion Committee meeting.

The next meeting will be August 28th, from 9:30 to 11:30 at **Central Office** in Conference Room C.

Thank you.

Lori Jaixen
Nebraska Department of Correctional Services
Behavioral Health Services
(402) 479-5758

Committee C
Mental Health Unit Development Committee Meeting
July 23, 2009

- 1) Present: Dr. White (co-chair), Sally Borgen (recorder), Wayne Chandler, Dr. Rajagopal, Todd Haussler, Diane Sabatka,-Rine, Paul Rodriguez, Larry Wayne, Jason Hurt, Kim Doht, Abby Leischner, Dr. Lukin

The meeting was held at the Lincoln Correctional Center (LCCC) in the Conference Room from 1:00 to 3:00.

2) Discussion Points:

a.) Program Update - Wayne Chandler

Wayne Chandler provided program updates for the past year. 137 MIRT reviews were completed and 95 were approved during the past year with the most recent reviews occurring this past month. 76 inmates reviewed have been moved to the Unit, 7 are currently pending, 8 have declined the program, 4 are on hold at present, and 5 which were approved remain in segregation. Total census of the Unit is 81. 5 have completed the program and have been discharged from the facility. There are expectations for more to be admitted to the program who are currently being monitored in general population. Currently 3 are pending from the TSCI to be transferred to the Mental Health D-Unit.

Several inmates on the unit are under Involuntary Medication Orders. It was suggested that the involuntary medication structure be readdressed with reference to a longer time span for the medication order to be in effect rather than the current six month period which does not seem to be optimal for patients on the Unit. **ACTION ITEM: Dr. White will review this issue with the work group that revised the Involuntary Medication Policy in 2007.**

b.) MDT – Jason Hurt

Jason Hurt reported a committee of Dr. Rajagopal, Dr. Lukin, Major, Joe Pospisil, and Todd Haussler will meet approximately every three weeks to review inmates in segregation. **ACTION ITEM: The first meeting will be Thursday, July 30th at 1:00.**

c.) Transition Confinement – Diane Sabatka-Rine

Diane Sabatka-Rine reported that the LCC is not staffed to provide transition transport from C-Unit to D-Unit on a regular basis and the AR does not support the concept of the transition expectations, which is to transition inmates from C-Unit to the D-Unit on a regular daily basis for approximately an hour or so a day to participate in and acclimate to the mental health unit and to serve as an incentive. Due to the inability to use this transition method some inmates have regressed with the over stimulation environment at one time. Mr. Wayne addressed the fact that a clear direction needs to be taken with reference to this transition and possibly a new AR needs to be written to comply with the expectations for inmates currently on C-Unit to participate and be involved on a gradual basis to the mental health unit. **ACTION ITEM: Mr. Wayne will discuss this issue with Director Houston.**

Dr. White requested that Dr. Lukin obtain the Federal BOP ARs regarding transition.

Kim Doht reported there are currently two ways for medical lay-in; 1) inmates can be out for a limited amount of time, 2) the psychiatrist can determine a lay-in. However, the inmate can refuse the second Level D option to be fed in their rooms. It was decided to come back to this issue.

d) Transfer – Dr. Lukin

was placed on an involuntary medication order 10/7/09 and since that time he has done very well with counseling and contacts. Kim Doht reported his medication has been corrected and he has been seizure free for two weeks. Currently in the DEC Hospital to rehydrate. Currently, wondering when he could be transition to C-Unit and presently his segregation time is standing at 2022. Ms. Sabatka-Rine stated that only the Director could shorten the time upon request from the Warden in writing. **ACTION ITEM: Mr. Wayne will discuss this issue with the Director.**

e) Construction Updates

- 1) One ADA cell is completed. Written procedures are presently done for D-Unit and E-Unit is meeting on August 2nd to write their policies and procedures.
- 2) Paint for the D-Unit was ordered on 7/20/09. Will have maintenance paint a blue stripe around the upper level of the unit and upper area of the day area. Motivation posters have been framed and hung on the unit.
- 3) Office for the MHP Supervisor is finished except for the office door, which has been delayed.

f) Personnel Staffing

- 1) Interviews for the MH Nurse Supervisor were held today. The supervisor will be the liaison between the mental health unit and medical.
- 2) Secretary II position for the MH Unit closes 7/27/09.
- 3) Marty Tamkin, MHP II, has resigned. Looking into hiring prior interviewees for a 11:00 am to 7:30 pm position. Leann Tice, MHP I has been approached to work later on Monday nights. Nate Schwab and Dr. Krzykowski would have one evening every month.
- 4) Substance abuse will be on board with staff following training in October.
- 5) Jessie Ball is a Masters level intern who will work three days a week for mental health.

g) Open House for D-Unit

Executive Director of ACA, Jim Gondles, will be in Lincoln September 9th and he will tour the MH Unit. A tentative open house for the mental health unit would be September/October for interested members of the Legislature, the Ombudsmans Office, Wardens, and DCS Executive Staff

3) Next meeting:

August 28, 2009, from 9:30 am to 11:30 am

From: Wayne, Larry
Sent: Sunday, December 20, 2009 8:11 AM
To: Houston, Bob
Subject: RE: Incident during Travel Order - TSCI

We've been taking these many years w/few problems. The most prominent thought for me is this guy made a bad decision(s).

Sent from my Windows Mobile phone

From: Houston, Bob <Bob.Houston@nebraska.gov>
Sent: Saturday, December 19, 2009 8:46 AM
To: Hansen, Brad <Brad.Hansen@nebraska.gov>; Hopkins, Frank <Frank.Hopkins@nebraska.gov>; Wayne, Larry <Larry.Wayne@nebraska.gov>; Smith, Dawn Renee <DawnRenee.Smith@nebraska.gov>
Subject: RE: Incident during Travel Order - TSCI

Folks,

Any thoughts on whether this incident causes us to rethink our policy on funeral travel?

From: Hansen, Brad <Brad.Hansen@nebraska.gov>
Sent: Thursday, December 17, 2009 10:08 PM
To: Houston, Bob <Bob.Houston@nebraska.gov>; Hopkins, Frank <Frank.Hopkins@nebraska.gov>; Wayne, Larry <Larry.Wayne@nebraska.gov>; Smith, Dawn Renee <DawnRenee.Smith@nebraska.gov>
Subject: Incident during Travel Order - TSCI

TSCI was escorting inmate Nikko Jenkins #59570 to the same funeral as NCCW staff was escorting one of their inmates. In the basement of the church Nikko Jenkins assaulted Lt. Morris. Sgt. Cruickshank, Lt. Morris and Caseworker Roedde subdued Jenkins. The State Patrol was called and ended up escorting Jenkins back to TSCI in the patrol car since they had a caged in back seat. Lt Morris received a cut on his lip but no other injuries. The other staff reported no injuries. Inmate Jenkins is back at TSCI.

From: Spindler, Robin
Sent: Friday, March 05, 2010 11:33 AM
To: Green, George
Subject: FW: notes of meeting in Omaha on 2/23/10 please review for accuracy
Attachments: DCS Executive Staff.doc

I added a couple of things (red font). Be careful, this may be one of those 'no good deed goes unpunished' things ☺
In other words, great minutes!

Robin Spindler
Deputy Director, Administrative Services
(402) 479-5711 (w)
(402) 479-5623 (f)

(402) 479-5712 Katina Farritor, Administrative Asst.

Please note that my new email address is Robin.Spindler@nebraska.gov

From: Green, George
Sent: Friday, March 05, 2010 10:00 AM
To: Kroeger, Concha; Spindler, Robin
Subject: notes of meeting in Omaha on 2/23/10 please review for accuracy

George Green, General Counsel
Nebraska Department of Correctional Services-Legal Division
Folsom & West Prospector Place
PO Box 94661
Lincoln, NE 68509-4661
Office: 402-479-5735
Fax: 402-479-5623
george.green@nebraska.gov

DCS Executive Staff

2/23/10

Houston, Urosevich, Wayne, Hopkins, Kohl, King, Spindler, Green

- Larry Wayne gave the OD report for Kyle Poppert, which is attached.
- Budget announcements were made: nothing has changed from last week on the budget status. We're going through the budget to see where we stand. No new positions are approved except on a case by case basis.
- The group discussed the Intensive Management bill proposed by James Davis, pending in the Judiciary Committee. Mr. Houston testified at the hearing. Marshal Lux' testimony was discussed, including "shadow discipline" concept of classification. The upcoming Mental Health Unit and improved decision making was discussed. There is a meeting scheduled for March 1, 2010 regarding the mental health unit. Access to programs in segregation was discussed in the meeting, and points were made that the nature of segregation was to limit access to the institution and that necessarily means less access to programs.
- John McGovern discussed the concept of meetings being productive. He distributed a card noting that the executive staff could bill at \$600 per hour, \$2400 per meeting, and \$120,000 per year. He asked the rhetorical question of whether or not we are adding that value. Steve King asked how we can do business better, and stated that no all time is "wasted" at meetings where communication is ongoing. The ESC is primarily informational in nature and the information is available in other forums also. The repetitive aspect of information sharing was discussed. Attendees using a PDA, not staying on task, or engaging in sidebar conversations was discussed. John McGovern said that the Single Minute Evaluation in manufacturing calls for an analysis of each step to make sure that value is added at each step in the process. Frank Hopkins said that there is a reason why this topic comes up from time to time. He said that we need to be flexible and attend to the needs of the audience. There are people who attend ESC and love the sharing of information. Steve King said that the original purpose of the ESC was to "drive quality" but, he asked "what does that mean?" The group asked whether or not the focus or purpose of ESC has changed. Mr. Houston questioned what information the ESC does to help corporals to do their jobs. Mr. McGovern stated that one of the effects of the budget crisis was to be come more efficient. Mr. Hopkins stated that the CQI discussion should come from your own life to explore leadership issues.
- Bob Houston said that leaders need to be conversant in many different areas and information sharing meets that need. That's why we transfer Wardens from institution to institution.

- Bob Houston had several additional comments to make.
 - Thanks to Steve King for assistance with the ACA Best of the Business article. Hon. Laurie Smith Camp also contributed to the article. It will appear in the May issue of the ACA publication.
 - The program statement for the upcoming budget considerations was reviewed with Larry Bare. Bob Houston wants all discussions regarding budget to be flawless.
 - Talk to others about the charitable giving, we increased DCS giving from \$16,000 to \$40,000 in one year.
 - The National Conference on State Legislatures published a chart on information in all 50 states regarding sentencing laws. One idea that was discussed was to raise the minimum limits for felony theft offenses. Another idea was to use a risk-based instrument to determine who is sentenced to prison. It was also discussed to screen inmates who are veterans for PTSD.
 - No capacity increases are in the offing for DCS. We will attempt to manage growth in population without increases in capacity.
 - Administrative confinement – there will be a meeting on March 1, 2010 to discuss this topic, regardless of legislation.
 - Jerall Moreland, with the Office of Public Counsel requested access to DCS Administrative Regulations on line. Steve King said that this poses us some real problems. Robin Spindler mentioned that on the DCS website there are many regulations. We send the Ombudsman a disc with AR changes as soon they are published.
 - An Iowa DOC newspaper article was discussed.
 - The Governor is insistent that no one accepts gifts from anybody. If you were to somehow receive something, donate it to charity.
 - The federal stimulus money will be the subject of a nation debate. The money will not be available on an ongoing basis. It means \$52 million for DCS in the most recent budget cycle.
 - Use e-filing for personal taxes. It's free.
 - Gerry Oligmueller mentioned to Mr. Houston that states are working on gaps for the upcoming budget. Senators are looking for savings.
 - For the upcoming March Budget Symposium consider what we would do if we received a 0% increase. A 0% increase is in effect a decrease in our budget.
 - There is a stark difference between wellness benefits and the regular insurance benefits. Encourage employees to use the wellness benefits.
 - Yahoo! May be coming to LaVista.
 - We want to schedule inmates keeping in mind the hours of service providers and provide a very busy schedule for inmates. We need to keep parole numbers up by insuring that Board has very well qualified candidates for parole.

- Steve King mentioned that we need to maintain fidelity to evidence-based programs, in terms of number of contact hours, length of programs and so forth.
- Bob Houston reminded the group that incarceration and treatment are not opposed to each other. He said that incapacitation is expensive and asked if we were moving inmates through the system as efficiently as possible. He said that 1/3 of the inmates in the system are parole eligible. Larry Wayne asked if we wanted to revisit the statutory restrictions on WEC placement. Bob Houston said not at present. We just increased the numbers at WEC and asked why we should add to that effort at this time. Frank Hopkins asked if we could develop a data base on inmates who refuse programming to we will know on a system basis. PPR are online now with the computer. There is a field to mark yes or no if parole is recommended. We can use that field to track paroles and the reasons for denial of parole.
- Bob Houston discussed a program statement for operation expansion. He likes community options, but there is a common understanding that 12.5% to 13% is average for community placement. Taking public safety into account, the Department needs to manage inmate risks. The Parole Board should manage the risks as well. We will request funds to study options for expansion as necessary. He stated that we can keep high security levels and units at current populations levels, but "crowd" only at minimum and community custody levels.
 - Population studies.
 - Validate classification instrument.
 - Effectiveness of programs.
 - Other programs used.
 - Offers programs in community.
 - Sexual assault and abuse potential in crowded institutions.
- Bob Houston stated that there is a need to have multiple needs addressed at the same time, education, mental health, substance abuse, and sex offender treatment could be offered simultaneously to prepare inmates for release. Currently substance abuse has imbedded LMHP. He stated that all institutions needed to follow the WEC practice of having inmates engaged in treatment at all times. Even if we only shave a few months off of each inmate's sentence, we can save resources. We have over 700 inmates who are serving one year or less. If we don't address crowding by operation changes we can't realistically expect to be supported for a capacity increase in the future.
- Bob Houston stated that we need to develop a program statement that takes into account future and present population increases, increasing community corrections placement and parole numbers. The program statement for budget purposes will also allow the legislature to address future and present capacity needs. The group discussed integrating programs to decrease time in the

institutions, setting TRD well enough in advance to stratify resources, revalidate the classification instrument, implementing integrated programs to prepare inmates to be viable parole or community custody candidates before parole eligibility when possible.

**DCS Executive Staff
Meeting Minutes
Monday, March 15, 2010
Director's Conference Room
10:00 am**

Present: Mikki Kirkpatrick, George Green, Dr. Randy Kohl, Steve King, Steve Urosevich, Robin Spindler, Frank X. Hopkins, John McGovern, Bob Houston, Concha Kroeger, Dawn-Renee Smith, and Larry Wayne

OD Report – Frank X. Hopkins (March 9 – 15, 2010)

- At this time, Mr. Wayne asked if Mr. King could get some statistics relating to the increase numbers of inmate-on-inmate assaults; has their been a significant increase or decline in numbers/reporting.

Next OD – Larry Wayne, (March 15 - 22, 2010)

Budget Announcements/Discussion (permanent Agenda item)

- Ms. Spindler shared the following:
 - We are now 1M\$ to the good.
 - BCBS billings forthcoming to keep in mind.
 - We will keep staff apprised of our status as we meet our end of the fiscal year goal.

Ground Rules – reviewed by all

- Start on time~
- Adhere to the break time~
- End on time~
- No side bar conversations~
- No PDA/Treo/MotoQ/Cell Phone interruptions~
- Stay on task~
- Time Keeper~
- If you have to leave the room, explain why~

Review Agenda – by all

Calendars – by all

“DCS Monthly Updates to the Governor” (permanent item)

- All current information has already been given to the Director this month.

CQI Presentation – Bob Houston

- Dr. Randy Kohl shared the following:
 - A handout to all titled: Make the most of new ideas by listening, questioning, and clarifying!
 - Leaders interested in growing and evolving their organizations should take heed instead of finding fault, then dismissing a new idea.
 - Give new ideas a chance to mature and evolve.
 - Listen,
 - Don't be one of those leaders who think they must have all the answers.
 - Don't just jump in; put aside judgment.
 - Question,
 - Positive or negative statements can have a nullifying effect.
 - Clarify.
 - Clarify, don't assume.
- Discussion: all staff agreed this is a good reminder. We all need to let the new ideas come to light; we should step back and listen because you never know what great idea we may have just missed. Showing great leadership begins with listening and not assuming what you may or may not have heard.
- Staff enjoyed this presentation and looks forward to the next one from Dr. Kohl.

Announcements – Bob Houston

- Mr. Houston shared the following:
 - He continues to talk with many staff about issues on the growing inmate population. He had Mr. King generate statistics regarding 5 months of female reclass vs 5 months of male reclass (see handout attached).
 - By looking over the chart, those reclassifications are appropriate; current custody.
 - The next data to look at is the overall population; classification.
 - To include information on:
 - A chart of growing status from now until 2016; questions/concerns.
 - Filling up WEC.
 - Not fully filling up WEC.
 - Facilities we don't want to have to be concerned about; security risk.
 - We need to look at DEC #'s; we don't want to overcrowd.
 - Also, Mr. King/Mr. Wayne to look at the 40% or so which of those offenders from WEC fail/go back to prison at any given time.
 - Check on success rate vs failure rate pertaining to (WEC vs others).
 - He would like to have Mr. Wayne narrow down talking points regarding efficiencies for the upcoming meeting with Larry Bare-Governor's Office.
 - He will be meeting with the Mexican Consulate again on May 20, 1:30pm in his conference room. This is a follow up meeting from last week when he met with the Mexican Consulate regarding specific data. Those who need to be in attendance have been notified.
 - He would like to have Mr. Hopkins and Mr. Wayne to check and see if each facility has at their front entrance rotation postings etc.
 - The NSP ABE/GED Graduation is being held on June 7, 2010, at 2:30 pm.

There being no further business the meeting was adjourned.

Next meeting will be Tuesday, March 23, 2010, 8:00 am, in the Director's Conference Room; please plan accordingly.

Submitted by: Concha Kroeger

From: Jaixen, Lori
Sent: Wednesday, March 17, 2010 8:03 AM
To: Browning, Sherri; Chandler, Wayne; Chirnside, Mary; Gissler, Layne; Haussler, Todd; Hurt, Jason; Kamal, M Shahid; Doht, Kim; Lenger, Teena; Lukin, Mark; Rickard, Dwight; Rodriguez, Paul; Rajagopal, Subramanyam; Sabatka-Rine, Diane; Smith, Teresa; Weilage, Mark; White, Cameron
Cc: Houston, Bob; Hopkins, Frank; Wayne, Larry; Spindler, Robin; Kohl, Randy; Kroeger, Concha
Subject: MHU Meeting Minutes
Attachments: 2-26-10.Committee C Minutes.doc

Good morning:

Attached please find the Mental Health Unit Committee Minutes. The next meeting will be April 23, 2010 from 9:00-11:00.

Thank you.

Lori Jaixen
Nebraska Department of Correctional Services
Behavioral Health Services
(402) 479-5758

Committee C
Mental Health Expansion Committee Meeting
February 26, 2010

Present: Wayne Chandler, Mary Chirnside, Robin Hinrichs, Teena Lenger, Dr. Lukin, Diane Sabatka-Rine, Larry Wayne, Dr. Weilage, Dr. White, Lori Jaixen (recorder).

The meeting was held in the Conference Room at the Lincoln Correctional Center (LCC) from 9:00 to 11:00.

Minutes from the previous meeting dated 1-15-10 were reviewed and accepted.

AGENDA ITEMS

Program Updates:

-Treatment Planning Changes

A draft of the FACE sheet was distributed (Attachment 1). It is proposed a FACE sheet will be done on all inmates on the MH Unit as well as special needs inmates. The FACE sheet will be a more active treatment plan that can be adjusted and measured over time. Staff are currently in the process of implementing this document and review and revisions will be conducted every three to six months after the initial assessment and recommendations are made. Furthermore, the diagnosis will constantly be reviewed. Discussion followed of who will be granted access to this document, (e.g. parole, WEC, probation). It is critical that confidentiality be maintained yet information that needs to be shared in the best interest of the client will be done.

-MIRT Data

The MIRT review team continues to meet, assess and re-assess inmates at all institutions to determine appropriateness for transfer to the Mental Health Unit. Inmates at DEC are being reviewed early in their incarceration to prevent transfer to another institution if appropriate for the MH Unit. 184 inmates have been reviewed to date (Attachment 2). It was discussed that the work that is done on the MH Unit has some unmeasurable outcomes such as the reduction of long term segregation for some inmates as well as probable reduced litigation.

-Mental Health Transition Services

A group of clinical staff met to discuss the viability of providing Mental Health Transition Services at OCC. A draft of the discussion of the initial meeting was reviewed (Attachment 3). The next critical step will be to meet with OCC administration to discuss this possibility. This meeting will be scheduled soon. Additionally Wayne Chandler will meet with the Parole Board to discuss individuals on the Mental Health Unit caseload. Discussion followed about the how critical a social worker's involvement is as this can be a factor that can equate success/failure for a paroled individual.

Non-Emergency Medical Request Form:

This form (Attachment 4) is currently used at DEC and NCCW and it is requested this form, with some modifications, be incorporated on the Mental Health Unit. There has been an overwhelming number of contacts with the nurse on the unit for questions/requests for medical services that should have been expressed on an Interview Request or through a Case Manager. This form would assist all staff in gathering pertinent information that will then be reviewed by the nurse as well as the Mental Health Treatment team the following day. This form will be reviewed March 5th at the ADON meeting and once finalized, will be discussed and shared with staff and inmates at the community meeting.

MH Unit Capacity:

Currently there are 69 inmates on the unit with 3 in the Control Unit and 9 in segregation. As there are 92 beds on the unit, this leaves approximately 20 unused beds. As this unit houses the highest risk inmates, this creates a challenge as there are some who are not appropriate for a roommate or if paired with the wrong inmate, can exacerbate their symptoms. The possibility of lowering the unit maximum capacity to, for example 75 on the unit and nine off the unit (in seg) was discussed. This will be further explored.

Substance Abuse Programming:

Programming continues on D unit and non-residential has started on E Unit. Outpatient Substance Abuse programming, with the exception of continued care, can now be completed on the Inpatient Mental Health Units. The procedure to share progress notes is still in process.

ADA Construction Updates:

The first ADA room is finished and in the second room, the stool and desk have been mounted. This room will be close to finished by mid-March. The third room is not done however it has been requested this project be moved up in completion priority.

Staffing:

The vacant nurse position has been advertised. The Nurse Practitioner position is in the interviewing process.

Next Meeting Time:

The next meeting will be at the LCC Conference Room on April 23, 2010 from 9:00-11:00.

From: Richard, Rex
Sent: Monday, July 25, 2011 3:53 PM
To: Heckman, Matt; Prater, Pam
Subject: FW: Mtg. Mins., OD Report, Handout/article, & next week's agenda
Attachments: 20110722123305143.pdf; July 19, 2011.doc; July 26, 2011.doc

Busy little OD week. I will be curious to see what the director is working on as far as legislative changes to the at will positions.

Rex C. Richard
Warden
Community Corrections Center-Lincoln
Office 402- 471-6250

From: Wayne, Larry
Sent: Monday, July 25, 2011 3:22 PM
To: Richard, Rex
Subject: FW: Mtg. Mins., OD Report, Handout/article, & next week's agenda

Rex: FYI and let me know if this is going to your office desk top now; thanks.

Larry Wayne
Deputy Director
Programs and Community Services
Nebraska Department of Correctional Services
P.O. Box 94661
Lincoln, NE 68532-4661
Office: 402 479-5721

"To give anything less than your best is to sacrifice the gift"

Steve Prefontaine

From: Kroeger, Concha

Sent: Friday, July 22, 2011 3:21 PM

To: Bennett, Levi; Green, George; Hopkins, Frank; Houston, Bob; King, Steven; Kirkpatrick, Mikki; Kohl, Randy; Kroeger, Concha; McGovern, John; Smith, Dawn Renee; Spindler, Robin; Urosevich, Steve; Wayne, Larry

Cc: Farritor, Katina; Lange, Peggy; Tempelmeyer, Amanda; Torres, Helen; Young, Konda; Blum, Kathy; Brebner, Jim; Carmichael, Mary; Egan, Erin; Ewing, Terry; Foster, James; Frandsen, Brad; Gibson-Beltz, Cathy; Glssler, Layne; Hansen, Brad; Hanson, Doug; Hickman, Becki; Hookstra, Inga; Jeanette, Elizabeth; Layman, Marian; Lindgren, Sharon; Martin, Michael; Neff, Steve; Peterson, Jeff A; Poppert, Kyle; Severin, Kate; Shanahan, Bob; Spring, B J; Sturdy, Ken; Tomek, Diana; Werner, Patrick; White, Cameron; Williams, Bettyjo

Subject: Mtg. Mins., OD Report, Handout/article, & next week's agenda

Hi, all:

Please be advised of the above-mentioned and as a reminder, our next Tuesday, July 26, Ex. Staff Meeting will begin at 7:30am, in the ECTC; please plan accordingly.

Thank you and see you soon~

Concha

~Let's continue the momentum...working as a team, in helping our fellow Nebraskans during our 2011 Statewide Charitable Giving Campaign (CGC)...give to those in need~

Conchita 'Concha' Kroeger
 Administrative Assistant to the Director
 NE Department of Correctional Services
 P. O. Box 94661
 Central Office, #1, YY Bldg.
 Lincoln, NE 68509
 Phone: 402-479-5903
 Fax: 402-479-5623
 E-Mail: concha.kroeger@nebraska.gov

DCS Executive Staff Meeting
Meeting Minutes
Tuesday, 19, 2011
9am
TSCI – Warden's Conference Room

120

Present: Bob Houston, Robin Spindler, George Green, Steve King, John McGovern, Steve Urosevich, Dr. Ranc Kohl, Levi Bennett, Larry Wayne, Frank X. Hopkins, & Concha Kroeger

- OD Report, Joe Baldassano, July 12 - 18, 2011 (via Frank X. Hopkins)**
 - NSP on modified lockdown; possibly off later today.
- Next OD, James Foster, July 19 – 25, 2011.**
- Budget Announcements/Discussion – Robin Spindler**
 - Ms. Spindler shared we are around 3.9M\$ to the good.
 - At this time, the Director thanked the Wardens/Department Heads for their leadership and to staff for their support during budget challenges.
 - With this amount of monies, it gives us a bit of flexibility for the future.
- Population Updates – Kyle Poppert/Layne Gissler**
 - On behalf of Mr. Kyle Poppert and Mr. Layne Gissler today, Mr. Houston and Mr. Wayne shared that due to yesterday's meeting at DOR's, all information was discussed there and we are moving forward. They thanked staff and shared that they believe the meeting at DOR Re: Re-Entry efforts; decreasing population, went very good and a lot of questions were answered.
- Calendars – reviewed by all**
- DCS Monthly Updates – Robin Spindler**
 - Ms. Spindler shared we will review current updates at next week's meeting.
- Warden Fred Britten-TSCI 'What is Occurring at TSCI'**
 - They have had some positions to be filled and continue to work steadily even though they are working with a bit over 14 vacancies.
 - The Wood shop is coming along, will be utilizing very soon.
 - Some canteen mismanagement occurring and investigation being done.
 - Population is good.
 - Security Threat Groups; being watched.
 - Bed spacing in PC & Segregation; down a little.
 - GP beds are filled.
 - 954 population count today.
 - He is very glad to have Mr. Brian Gage back in the office as Mr. Gage was assisting with the hosting of the State Department-Tunisia. At this time, Mr. Houston extended a big thank you to be shared with Brian, as this took a lot of time and communicating challenges.
 - He wanted to extend to all that TSCI is working on their 10 Year Anniversary Celebration for Tuesday December 13, 2011, more details to follow as preparation is still in the works.
 - Staff at the end enjoyed a brief tour on the 2nd floor to view new video equipment: for training & security. This equipment has been working very good and TSCI mentioned, a big thank you to IT staff for their support and help as this is quite cumbersome to put in place to utilize.
 - Ex. Staff shared a big thank you to Warden Britten for his hospitality and thank you to staff for all they do.
- Announcements – Bob Houston**
 - Reminder, our 2011 DCS Annual Recognition will be held on Thursday, September 29, 2011, at the Capitol Rotunda; please plan attending and congratulate all our individuals being recognized and to say thank you for all they do~

- He and Mr. McGovern will be going to Eppley Airfield and present a recognition plaque to say thank you for all they have done to assist our Department, especially, within our Omaha facilities due to flooding issues this past month. Thank you to CSI for making such a fine plaque~
- He would like to discuss Legislative Proposals at next week's meeting; Ms. Dawn-Renee Smith will gather information for discussion on 'Discretionary Positions'. Ms. Kroeger will add to the agenda.
- As he mentioned earlier in the meeting the Re-Entry Mtg. at DOR yesterday went good and he is looking for the following to occur/next steps:
 - We need to be recommending at least 191 – 200 to BOP each month.
 - Look at utilizing alternate programming path for those to get on parole.
 - Due by parole eligibility date.
 - Give them a plan in moving out.
 - He would like to have Ms. Becki Hickman-PRA to check on earlier hearing dates.
 - He will continue to work with and talk with Ms. Esther Casmer-BOP Chair on issues at hand.
 - Look at before PED, make a hearing; reviews up to the BOP.
 - With treatment- can be moved to Plan B – because of PED we can do residential & get out in the community; resources.
 - Also, we have a high number in SAU which we could get out on parole; let see what we can do.
 - Therefore, we need to work on practical implementation so the Director has decided to call a meeting regarding issues above.
 - **Program Recommendation Merging – Treatment/Classification**
 - **Monday, July 25, 1:30 pm, in the ECTC.**
 - To include: Fred Britten (in for Frank X. Hopkins), D Randy Kohl, Dr. Cameron White, Dr. Richard Thomas, Dr. Mark Weilage, Ms. Spindler, Mr. Wayne, Mr. Ky Poppert & Mr. Layne Gissler.
 - Once we work out this implementation stage, we will move forward.
 - Ms. Julie Masters-UNO, working on preparing an Aging Population video in which we can utilize a lot of benefits for us. This will be a gathering/collaborative effort with our Department. To include: STA, Security, Treatment, & Unit staff to attend for preparation. Ms. Spindler and Mr. Houston working out further details; September 2011 to take place.
 - We have a safe keeper from DHHS, this individual doing good; to be here with us until August 2011.
 - Mr. Houston and Mr. Bennett will be getting together to discuss some updates on the Pharmacy issues at hand.
 - He would like to invite our CMSW-Ms. Kathy Foster to this week's meeting at UNO; Ms. Kroeger will apprise her of this.
 - We calculated around 23T\$ annually for court transfers, this will be shared with key folks downtown.
 - He shared an article he had received from another agency (see attached) regarding Colorado DOC – "Colorado put IP services on lockdown – Administrative Confinement privileges"; this is something he would like to have Mr. Bob Shanahan-IT Administrator look into; and, when Colorado DOC, Ms. Kathy Slack, comes later this Fall, we will get some input from her on how it has progressed.
 - He shared that the OWH had an article in the paper a few days ago which was regarding the Omaha Public Schools being criticized for spending monies on a book for their staff pertaining to their diversity efforts; issues in the book content were of specific individual privileges. We here at DCS are looking at enhancing our diversity efforts and we seek to 'up lift others, not down'. If you get a chance, see the article.

There being no further business the meeting was adjourned.

The next meeting will be held on Tuesday, July 26, 2011, 7:30am, in the ECTC; please plan accordingly.

Submitted by: Concha Kroeger



**DCS Executive Staff Meeting
Agenda
Tuesday, July 26, 2011
7:30 am
Emergency Command/Training Center (ECTC)**

- Officer of the Day Report (5 minutes)**
- Announce Next Officer of the Day**
- Budget Announcements/Discussion (permanent Agenda item)**
- Ground Rules for Executive Staff**
 - Start on time~
 - Adhere to the break time~
 - End on time~
 - No side bar conversations~
 - No PDA/Treo/MotoQ/Cell Phone interruptions~
 - Stay on task~
 - Time Keeper~
 - If you have to leave the room, explain why~
- Calendars**
- Population Updates – Layne Gissler/Kyle Poppert (permanent Agenda item)**
- DCS Monthly Updates to the Governor (permanent Agenda item)**
 - Positive Things~
 - Issues~
 - Assistance to Counties~
 - Budget~
- CQI (10 minutes) – we will adjust dates as needed~**
 - Steve Urosevich (July 26, 2011)
 - Larry Wayne (August 9, 2011)
 - Mikki Kirkpatrick (August 23, 2011)
 - Concha Kroeger (September 6, 2011)
 - Levi Bennett (September 20, 2011)
 - Robin Spindler (October 4, 2011)
 - Frank X. Hopkins (October 18, 2011)
 - John McGovern (November 1, 2011)
 - Bob Houston (November 15, 2011)
 - Steve King (November 29, 2011)
 - Dr. Randy Kohl (December 13, 2011)
 - Dawn-Renee Smith (December 27, 2011)
 - Green George (January 10, 2012)

- Inga Hookstra, Accounting and Staff – “What is Occurring in Accounting” – 8:30am (15 minutes)
- Engineering Updates – Nick Amen/Robin Spindler - 9:00 am (10 minutes)
- New Leave Slip – Pilot Feedback & Implementation – Marian Layman/Karen Michaelson – 9:30am (30 minutes)
- Legislative Proposal – Bob Houston/Dawn-Renee Smith (15 minutes)
 - Discretionary Positions
- FY ‘12 – FY ‘13 In-Service Training–Supervisors – Bob Houston/Mikki Kirkpatrick (20 minutes)
- Announcements – Bob Houston
- ESC Topics – Bob Houston (5 minutes)
 - July 28, 2011, ESC, 8:00 am – 1:30pm, Conference Room C
 - Facilitator Brad Hansen
 - Recorder: Konda Young (filling in for Concha Kroeger)
 - FYI: bring your lunch; a luncheon meeting
 - Director’s Announcements (15 minutes)
 - Diversity Assessment Continuation – Anne Marie Kenny, M.O.L – 8:30 am (2 hours)
 - All ESC Members to be in attendance; no substitutions~
 - Legislative Updates (5 minutes) Dawn-Renee Smith
 - Budget Updates (5 minutes) Robin Spindler
 - DAS Talent Management Updates – Administrative Services-State Personnel Staff – 10:30 am (1 hour)
 - IT Training (15 minutes) Bob Shanahan
 - Internal Control Training (15 minutes) Joyce Woofter (moved from May 2011)
 - Victim Assistance Video Presentation (15 minutes) Liz Jeanette (moved from May 2011)
 - Review/Discussion of Changes to AR 112.07 Discrimination/Workplace Harassment (1-hour) Robin Spindler
 - RFP – Instrument on Hiring Selection Process 5 minutes (Marian Layman)
 - Other Announcements (5 minutes) All
- Other Announcements (5 minutes)

Future Scheduled Meeting Items

August 2011

- **August 2, 2011, Executive Staff Meeting, 8am, ECTC**
 - Purchasing Updates – Mary Carmichael/Annette Walton/Robin Spindler – 8:00 am (15 minutes)
 - Security Administrators/Turn Key Security – Frank X. Hopkins/Brad Hansen – 8:15 am - (15 minutes) (follow up from May 4, 2011)
- **August 9, 2011, Executive Staff Meeting, 9:00 am.**
 - Warden Mike Kenney & OCC Staff – What is Occurring at OCC & a Tour of the facility (45 minutes)
 - Please plan accordingly; we depart CO Back Entrance at 7:45 am.

• **August 15, 2011, Executive Staff Meeting, w/All CO Department Heads, Conference Room "C" ~~not~~ August 16, 2011, 8am, GGC Encouragement, Director visiting staff today, around CO – Bob Houston – (10 minutes)**

- **August 23, 2011, Executive Staff Meeting, 8am, ECTC**
- **August 30, 2011, Executive Staff Meeting, 8am, ECTC**
- **September 27, 2011, Executive Staff will be from 8am – 12 pm...1-hour extra as the Tuesday, October 4, 2011, meeting is cancelled; please plan accordingly~**
- **September 29, 2011, ESC, 8:00 am – 1pm, Facilitator, Layne Gissler, Conference Room C**
- **October 25, 2011, Executive Staff Meeting with All CO Department Heads, Conference Room C**
- **November 17, 2011, ESC, 8:00 am – 1pm, Facilitator, Liz Jeanette, Conference Room C**
- **December 27, 2011, Executive Staff Meeting with All CO Department Heads, Conference Room C**

From: Wayne, Larry
Sent: Tuesday, September 27, 2011 1:51 PM
To: Sherman, Shawn
Subject: RE: TSCI Inmate Nikko Jenkins #59478

Shawn: perfect, exactly what I needed to answer his allegations. Thanks.

Larry Wayne
Deputy Director
Programs and Community Services
Nebraska Department of Correctional Services
P.O. Box 94661
Lincoln, NE 68532-4661
Office: 402 479-5721

"Life's not the breaths you take, but the moments that take your breath away"

George Strait

From: Sherman, Shawn
Sent: Monday, September 26, 2011 3:17 PM
To: Wayne, Larry
Cc: Britten, Fred; Gage, Brian; Pearson, Melinda
Subject: RE: TSCI Inmate Nikko Jenkins #59478

Mr. Wayne,

Inmate Jenkins, Nikko #59478 has been screened by CVORT. He is recommended to complete the Violence Reduction Program at NSP. He is not recommended for other mental health programming at this time.

Currently TSCI Mental Health staff sees inmate Jenkins on a regular basis. At this time Mental Health staff at TSCI does not believe there is any indication that Mr. Jenkins is being denied mental health treatment based on his current placement.

TSCI Mental Health staff have assured me, if they believe that inmate Jenkins', or any other inmate's, housing placement should be changed in order to best manage any mental illness symptoms, they will make necessary recommendations to the Institutional Classification Committee; as well as make appropriate recommendations to the Mental Illness Review Team (MIRT).

If you have any questions regarding this information or need additional detail please contact me.

Shawn Sherman
Unit Administrator
Tecumseh State Correctional Institution
402-335-5129

From: Wayne, Larry
Sent: Monday, September 26, 2011 11:40 AM

To: Sherman, Shawn
Subject: TSCI Inmate Nikko Jenks #59478

- Shawn: I'm inclined to deny this inmate's appeal to come off Intensive Management. He makes a claim however his current classification is precluding him from getting mental health treatment. Can you advise me what his needs are and if they're being addressed? Thanks.

Larry Wayne
Deputy Director
Programs and Community Services
Nebraska Department of Correctional Services
P.O. Box 94661
Lincoln, NE 68532-4661
Office: 402 479-5721

"Life's not the breaths you take, but the moments that take your breath away"

George Strait

From: Wayne, Larry
Sent: Monday, October 03, 2011 1:38 PM
To: Britten, Fred
Cc: Hopkins, Frank
Subject: Nikko Jenkins #59478 follow up

Fred: Omaha City Councilman Ben Gray sent me a fax indicating Inmate Jenkins had been under care of a Dr. Gaines while in Douglas County up until his recent return to TSCI. He doesn't indicate if Dr. Gaines is a mental health clinician, but *I'd like someone there to see if Jenkins will sign a release for us to obtain the records of the therapy Mr. Gray indicates he received from Dr. Gaines while in Douglas Co.* Please advise me on what Jenkins says and does regarding this request. Thanks for this and follow up on the other concerns Mr. Gray alleged concerning conditions of Inmate Jenkins' conditions of confinement at TSCI.

Larry Wayne
Deputy Director
Programs and Community Services
Nebraska Department of Correctional Services
P.O. Box 94661
Lincoln, NE 68532-4661
Office: 402 479-5721

"Life's not the breaths you take, but the moments that take your breath away"

George Strait

From: Wayne, Larry
Sent: Wednesday, October 05, 2011 9:34 AM
To: Britten, Fred
Cc: Hopkins, Frank
Subject: RE: Nikko Jenkins #59478 follow up

Thanks Fred, most helpful. I'll call Mr. Gray back and let you know if any other issues arise following that.

Larry Wayne
 Deputy Director
 Programs and Community Services
 Nebraska Department of Correctional Services
 P.O. Box 94661
 Lincoln, NE 68532-4661
 Office: 402 479-5721

"Life's not the breaths you take, but the moments that take your breath away"

George Stralt

From: Britten, Fred
Sent: Tuesday, October 04, 2011 12:36 PM
To: Wayne, Larry
Cc: Hopkins, Frank; Britten, Fred; Gage, Brian; Sherman, Shawn
Subject: RE: Nikko Jenkins #59478 follow up

Larry, here is some follow-up to the questions/issues raised by Ben Gray regarding Nikko Jenkins:

1. Staff observed Jenkins and another inmate with a string stretched between their Intensive Management exercise yards. One end of the string had a toothbrush, with no bristles, attached to it; this enables the string to be tossed from one cell/yard to another. This is a common method used by inmates to pass items between each other. Each inmate had an end of the string in their respective exercise yard. Per usual procedure in these sort of situations, the inmates were placed on limited property status. This status is reviewed regularly to determine when to change same.
2. On 10/02/11, inmate Jenkins received a video visit (he's on IM in SMU) from his mom, Lori Jenkins, a lady named _____ who also had a minor aged visitor with her named _____. They visited for approximately 47 minutes. These type of visits are authorized for up to an hour. I have no information/reports indicating any issues regarding this visit.
3. There is no " court order " for Jenkins to receive mental health treatment. The sentencing document from the court reads in part..... " The Court therefore recommends to the Department of Corrections that Defendant be assessed and treated for issues regarding his mental health. " Mental Health staff have assessed Jenkins and recommended him for the Violence Reduction Program (VRP) based on his behavior not a diagnosis of mental illness. At this time mental health staff have not determined that there is a need to refer Jenkins to the Mental Illness Review Team (MIRT). However, based on his segregation status and behavior, VRP is not an option at this time. Jenkins does have a TRD of 1/30/13.
4. The last four Misconduct Reports issued on Jenkins were written by four different staff, so I am not seeing a pattern from any one staff member. However, _____, noted above, called TSCI on 10/3/11, and questioned whether Lt. Morris was on the gallery when a use of force was done on Jenkins. [On 10/2/11, when staff placed Jenkins on Limited Property status do to the string incident, he was not cooperative, but no use of force was required.] As you may recall, Lt. Morris was the OIC on the funeral travel order where Jenkins acted out (assault/attempted escape) and ultimately was charged and received additional time.

5. Jenkins will not sign a release for NDCS to obtain information from Dr. Gaines. Jenkins claims NDCS has more information about him than Dr. Gaines.

I hope this addresses the questions raised by Ben Gray. Let me know if you need more info. I will scan you the sentencing document noted above. The reference information (mental health recommendation) is on the second page of that document. Thanks

Fred Britten, Warden
Tecumseh State Correctional Institution
e-mail : fred.britten@nebraska.gov
Phone : 402-335-5104

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From: Wayne, Larry
Sent: Monday, October 03, 2011 1:38 PM
To: Britten, Fred
Cc: Hopkins, Frank
Subject: Nikko Jenkins #59478 follow up

Fred: Omaha City Councilman Ben Gray sent me a fax indicating inmate Jenkins had been under care of a Dr. Gaines while in Douglas County up until his recent return to TSCI. He doesn't indicate if Dr. Gaines is a mental health clinician, but *I'd like someone there to see if Jenkins will sign a release for us to obtain the records of the therapy Mr. Gray indicates he received from Dr. Gaines while in Douglas Co.* Please advise me on what Jenkins says and does regarding this request. Thanks for this and follow up on the other concerns Mr. Gray alleged concerning conditions of inmate Jenkins' conditions of confinement at TSCI.

Larry Wayne
Deputy Director
Programs and Community Services
Nebraska Department of Correctional Services
P.O. Box 94661
Lincoln, NE 68532-4661
Office: 402 479-5721

"Life's not the breaths you take, but the moments that take your breath away"

George Strait

From: Wayne, Larry
Sent: Wednesday, October 05, 2011 1:28 PM
To: Britten, Fred; Hopkins, Frank
Subject: RE: Nikko Jenkins #59478

Thanks Fred-

Sent from my Windows Mobile phone

From: Britten, Fred <Fred.Britten@nebraska.gov>
Sent: Wednesday, October 05, 2011 12:21 PM
To: Wayne, Larry <Larry.Wayne@nebraska.gov>; Hopkins, Frank <Frank.Hopkins@nebraska.gov>
Subject: FW: Nikko Jenkins #59478

Please see below information I provided to Mr. Houston a few minutes ago. After further checking, there was a use of force on Jenkins. I was told differently yesterday. Sorry about the misinformation. If questions, please let me know. Thanks

Fred Britten, Warden
 Tecumseh State Correctional Institution
 e-mail : fred.britten@nebraska.gov
 Phone : 402-335-5104

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From: Britten, Fred
Sent: Wednesday, October 05, 2011 12:10 PM
To: Houston, Bob
Cc: Britten, Fred
Subject: Nikko Jenkins #59478
Importance: High

Bob, some additional information:

- On 9/30/11, a Use of force was initiated on Jenkins as he refused to cuff up so staff could remove property from his cell. Staff gave him multiple directives per procedure and warned of the potential reaction from the pepper spray. Jenkins responded, " I have to do what I have to do. "
- After several applications of pepper spray, Jenkins allowed staff to place restraints on him. A split sock was placed on him because of his combative frame of mind and his runny nose and watery eyes due to the pepper spray. The sock was an additional barrier preventing staff from exposure.
- Jenkins is currently scheduled to have his IM status reviewed prior to January 1, 2012. He was continued for four months on 9/1/11 due to the incident that led to his initial classification to IM and comments he made during his classification hearing indicating he getting more and more unstable and that he has a history of violence and he is not taking his meds because he doesn't trust the doctors at TSCI.
- Based on our conversation, I will have Jenkins reviewed next week and considered for AC.

Hope this information is helpful. Let me know what else you need. Thanks

Fred Britten, Warden
 Tecumseh State Correctional Institution
 e-mail : fred.britten@nebraska.gov
 Phone : 402-335-5104

From: Smith, Dawn Renee
Sent: Thursday, December 15, 2011 2:06 PM
To: Kroeger, Concha
Subject: RE: Oct. 11, 2011, Ex. Staff Mtg. review
Attachments: 10-11-11 Executive Staff.doc

Just did it. I think I missed this request or thought it was a different one you didn't need. Either way...I did review and have made a few changes. I don't know that I caught everything.

Dawn-Renee Smith

Legislative & Public Information Coordinator
Nebraska Department of Correctional Services
PO Box 94661
Lincoln, Nebraska 68509
Phone: 402.479.5713
FAX: 402.479.5623

dawnrenee.smith@nebraska.gov

"Work joyfully and peacefully, knowing that right thoughts and right efforts will inevitably bring about right results." ~James Lane Allen

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From: Kroeger, Concha
Sent: Thursday, December 15, 2011 11:06 AM
To: Smith, Dawn Renee
Subject: Oct. 11, 2011, Ex. Staff Mtg. review

Did you happen to have a chance to review the above-mention for me; I gave you a copy of Konda's notes about 3 weeks ago as I wasn't there and didn't want to send out with someone going over.

Thank you, Dawn-Renee.
Concha

Conchita 'Concha' Kroeger
AA to Director Houston
NE Dept. of Correctional Services
PO Box 94661
Lincoln, NE 68509
Phone: 402-479-5903
Fax: 402-479-5623
E-mail: concha.kroeger@nebraska.gov

Executive Staff
October 11, 2011
ECTC

PRESENT: Robert Houston, Kyle Poppert, Jeff Peterson, George Green, Larry Wayne, Mikki Kirkpatrick, Levi Bennett, Robin Spindler, Dawn Renee, Dr. Randy Kohl, John McGovern, Doug Hansen, Steve Vodiska and Konda Young

Keith Ernst and Linda Bos

Bob mentioned the Afghan delegation and how they discussed their experiences with the Taliban and how much they appreciated the Department for allowing them the time with the Department.

Director Houston presented Steve Vodicka with an NDCS Challenge Coin for the consistently detailed and high quality work he does completing safety, sanitation and quality inspections for the agency.

Medical Designation Update

Dr. Kohl – Noted that the two long care facilities are already licensed and an inspection was completed last week at TSCI. Licensed Skilled Nursing Facilities have different requirements in regards to generators and codes. It is important to note that the Department does not have hospitals but Licensed Skilled Care Facilities. This allows us to maintain licensure without added costs of more generators.

It was noted that some work is still necessary for DEC. NSP's and DEC's inspections will be occurring in November.

Office of the Day Report – John McGovern
Joe Baldasanno will have it next week.

It was noted that with the increase in number of individuals on parole the Department is likely to see an increase in activity found in the news.

Bob presented Linda Bos an NDCS Challenge Coin, thanking her for all the wonderful work that she has done for coordinating awards ceremonies.

BUDGET – Most of the projects involving the cameras are proceeding on schedule. The Microsoft Office and the Cloud are following schedule. The parking lot repairs will need to wait until spring. There were no other significant changes dollar-wise.

The Pharmacy plan is still progressing to change pharmacy techs to a pharmacist. We achieved the cuts for the pharmacy with approximately \$200,000 savings. Want the pharmacist going out and talking to the doctors indicating what may be a more efficient use of medication choices by using a lesser expensive medication. This will not change the quality of the care but save the Department money by using less expensive medication.

Calendars – Went over the Calendars

Population Updates – Kyle Poppert

4440 – total
 1121 on parole
 150 hearings scheduled for October (29 are RFP hearings)
 62 discharging in October and only 79 for November

Robin noted of the 275 about 120 would be good possibly for recommending. The discrepancy is due, in part, to those who were paroled and revoked who had not had a new IPR completed.

Bob noted we want to make sure we are printing each IPR, so that when the Department takes these down to the Parole Board there is clarity between the Department and the Parole Board. Currently it is a batch file that runs.

At least at first we will need to take the list to them. Closing the housing unit in July.

Esther, Bob and Larry Bare will be meeting in December regarding the numbers.

Monthly Update – Robin handed out a draft. A few changes were added.

CQI

CQI rescheduled to October 18th

OCIO Implementation of the Good Time Law

The system has been tested and will accept, track, and manage changes. There still needs to be work done on the batch process. This will be handled automatically. As of today it would have to be added manually. Once completed this will be done automatically. Kyle Poppert is the contact person identified for the Office of the CIO.

Performance Evaluations – Make sure all of them are completed.

***** Empty Bed Space at each facility** – Steve King – so we know where the empty beds are located at. This will assist other Institutions to know where bed spaces are available. – Steve Report on this Next Week

ESC Topics – Liz, Concha – Anne Marie

Blue Ribbon Panel is December 15th

Bob's Announcements:

- **Shift Roster (Report out Next Week)**
 - Still waiting for the cost from the company. Needing to find out how soon it can be started? The cost will be at least \$100,000. The advantage is that this will merge well with KRONOS.
- **History Committee** – Coin and Certificates – Liz Jeanette – Terry Ewing – Want to have a watermark certificate. (NSP) 9:00
- **Biometrics for the Entrances** – Brad Hansen
- **Investigations** – Frank Hopkins – report out next week
- **Administrative Regulation** – Frank and George
 - After January 1st every personnel case will be done by a trained investigator. Shortly thereafter we will need to set a date for all inmate investigations to be handled by a trained investigator. This will assist so that we can document and show that the right information is being accessed for placing and removing individuals from Administrative Confinement.
 - Administrative Regulation that would then include the needed elements for the investigation so it is reflected in policy. There are 3 classes coming up.
 - If you went to the training in March the individuals will not need to go again. The class is basically the same materials. The things to focus on will be a written assignment, use a plan to who ever assigned it to you and the report will use a specific format.
 - Bob noted that George and Brad will work on the AR so there are yearly reviews and the format will be an attachment.

- Administrative Confinement Work Group NIC will arrive on the October 23rd. October 25th – have an open meeting at 9:00 am. Conference Room C Closing meeting on Friday. Also Senator Ashford, Senator Council and Ombudsman's Office. Diane and Fred will be the co-coordinators. October 28th at 9:00 or 10:00 is the closeout.
- Bob discussed the article in the Criminal Justice Newsletter regarding the Funeral Prohibition policy. Bob spoke with Mr. Krejchi regarding the funeral leave policy and will be writing up a follow-up article.
- Senator Chambers called Bob regarding Nikko Jenkins. Bob noted that Jenkins contributed to the change our policy. He will be reviewed again.
- Ben Gray of the Omaha City Council called regarding Nikko Jenkins' mental health needs. It was noted that Jenkins refused to sign the release of information so we were unable to share any more with Mr. Gray.
- Bob noted that he will be providing testimony this afternoon regarding Sex Offenders.
- Dawn-Renee is going to finish a memo regarding Dr. Hank Robinson's acceptance of the offer to head the research department at NDCS.
- Was noted that we have some of the best and clearest accounting systems. Spoke to Tony Fulton who noted that the Department has the clearest accounting systems for the State.
- Holly Smith sent out an email to different computer contacts and it has to do who can approve Seibel – for the Website programs – The help desk doesn't have that knowledge who should approve access to these programs. Have someone who understands the programs as well as the positions – who would know what is going on. It was decided Layne Gissler will be that person for Central Office.
- There will be requests that were going to BJ that will need to go to the help desk. Working with the CIO for cross training – BJ will be gone for an extended period of time.
- List of 275 names that are being reduced down – for those individuals who the only problem is their program recommendation – see if the program is something that can be done on a reentry model. Looking at restructuring treatment recommendations.

- Larry noted we are looking at alternative for community housing.
 - Looking at what an RFI would look like. The interest is that we have people that go to Community B have another step beyond Community B where they only pay 360 a month. If we can get them to another step and off of our count, almost like another type of 1/2 way house. This would be a step between RFP and community. Looking to see if we can find someone who would be willing to house someone for the Department. Possibly have 4 in a room. The question was posed on how would we conduct accountability checks and following up on schedules. Being prepared for parole. This is preparation for 2013. So by March we need to know if there is a vendor that we can work into the budget. What the cost savings would be?
 - Put it together in preparation – not an RFI – but a laundry list of what we would need. Just using the model – if we get the okay then it may go out to the public.
 - Will talk to Robert Bell – to see if there is a way to be cheaper to hold Community B inmates. Involve parole officers to make sure they have confidence in being able to keep track of these individuals.

From: Richard, Rex
Sent: Wednesday, January 18, 2012 2:31 PM
To: DCS CEO
Cc: Hopkins, Frank; Torres, Helen; Houston, Bob; Gissler, Layne; Poppert, Kyle; Boal, Beth; Wayne, Larry; Spindler, Robin
Subject: FW: Spreadsheet for Friday
Attachments: 01112012-1 Spreadsheets for Friday.xlsx

Good afternoon all. Attached is the "no" list we discussed this morning. As you can see there are three tabs at the bottom with three different groups of data: The first one is "PED before 6/30/2012, all", the second is "IPR=no, any TRD" and the third is "IPR=no, TRD in three years". I would suggest concentrating efforts on the third list, that being the IPR=no, TRD in three years as I think we will find the "fishing" best in this pool, rather than in the list with inmates who have TRD's many years in the future. This list can be modified via the "data" tab so that the list will group by facility and by ascending TRD. That is how I had the list when I closed the spreadsheets, and hopefully how it will appear when you open them. If not, give me a call and I can walk you through how that is done. Again, my thanks to all of you for your efforts on this matter.

Rex C. Richard
 Reentry Coordinator
 Nebraska Correctional Services

From: Boal, Beth
Sent: Wednesday, January 11, 2012 2:50 PM
To: Spindler, Robin
Cc: Richard, Rex; Robinson, Hank
Subject: Spreadsheet for Friday

Attached are the updated spreadsheets. They do not change a lot since we are using a fixed end date of 6/30/2012. But if you want me to rerun late tomorrow, I can.

Summary Counts:

1. Total with PED < or = 6/30/2012, IPR = Y, no TRD filter: 1023
2. PED < or = 6/30/2012, IPR = N, no TRD filter: 560

Also Included:

3. PED < or = 6/30/2012, IPR = N, TRD within 3 years: 429

Thank you,

Beth Boal
 Office of the CIO
 State of Nebraska
 501 South 14th Street
 P.O. Box 95045
 Lincoln, Nebraska 68509-5045
 email: beth.boal@nebraska.gov

phone: 402.471.0703 (OCIO)
402.479.5770 (DCS)

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From: Richard, Rex
Sent: Monday, January 30, 2012 1:53 PM
To: DCS CEO
Cc: Hopkins, Frank; Spindler, Robin; Houston, Bob; Wayne, Larry; Gissler, Layne; Poppert, Kyle; Boal, Beth
Subject: FW: dcs recs of no - sorted by TRD
Attachments: parole rec no 1.9.12.xlsx

Good afternoon all. This message is primarily intended for the Warden's at TSCI, NSP, OCC, CCCL and LCC. I just wanted to touch bases with you to let you know of our progress on the review of the "NO" list. To date I have received 8 updated IPR's for the individuals on this list. Using a June 1 cut off date, that is, not considering those who mandatorily discharge in February, March, April and May of 2012, I find that these institutions have the following numbers of inmates that MAY be considered for parole prior to July of 2012:

CCCL 19

NSP 41

LCC 46

OCC 91

TSCI 38

Based upon the number of updated IPR's that have been received at this time, I would ask that you check with the staff at your respective institutions and possibly give me a bit of information on how the review and possible updating of the parole recommendations are coming at your facility. Many thanks!

PS: "File review days" are scheduled with Ms. Casmer on both February 15 and February 27, so updates completed prior to those dates can still be considered. Please let me know if you have questions.

Rex C. Richard
Reentry Coordinator
Nebraska Correctional Services

From: Richard, Rex
Sent: Wednesday, January 18, 2012 2:06 PM
To: Boal, Beth
Subject: FW: dcs recs of no - sorted by TRD

Rex C. Richard
Reentry Coordinator
Nebraska Correctional Services

From: Spindler, Robin
Sent: Monday, January 09, 2012 2:51 PM
To: Richard, Rex
Subject: dcs recs of no - sorted by TRD

MEMORANDUM

DATE: March 21, 2012

TO: Frank X. Hopkins, Deputy Director/Institutions

FROM: Mario F. Peart, Warden – LCC

SUBJECT: Executive Staff Meeting – 3/19/12

PRESENT: Marlo Peart, Robert Madsen, Denise Skrobeckl, Major Diltz, Jason Hurt, Tammy Kløver and Laura Bonow

Mr. Peart opened the meeting at 9:20 a.m.

Major Diltz reported that there are two custody vacancies. He attended a Security Administrators' meeting last Friday where they discussed the automated roster system. The tele-key system was also discussed. Capts. Burkey and Sparks will be participating in some upcoming security audits.

Laura Bonow went over schedules for the week with everyone.

Jason Hurt had nothing to report.

Denise Skrobeckl stated that DAS rejected complaints on the inmate video system. She stated that e-messaging will be coming very soon.

Robert Madsen advised that the STOP Club has requested to have outside food for a symposium. Since this group is not an ethnic club, it will not be approved.

Mr. Peart discussed the following issues:

- Labor Management meeting – staffing issues is listed on the agenda
- Housing Unit control stations need to be organized.
- Denise would like to recognize Jeff Salomons, Brandon Noordhoek and Amber Wiens for their assistance with the long-term storage area and the canteen
- An Inmate at TSCI requested a different beard trimmer (specifically for African-Americans).
- Discussion regarding leadership meeting

Notes from the Wardens' meeting:

- Larry Wayne talked about RFP. He stated that paroles are up and higher risk inmates are being looked at. Remember to use appropriate wording.
- Larry Wayne and Hank Robinson are looking at the long-term A.C. issue of going from long-term segregation to P.C.

**EXECUTIVE STAFF MEETING
MARCH 19, 2012
PAGE 2**

- Mr. Hopkins asked the facilities to identify inmates for WEC (programming is five to six months and not ninety days).
- Unit Administrators need to communicate with each other regarding inmate numbers, who is on the waiting list, etc.
- We need to get copies of George Green's memo to employees regarding medication aide training to all employees.
- The holiday schedule was discussed.
- Employees on outside sports teams can come in to play. A & R can still come in with a team and set things up.
- Use the electronic MR process only for what it is designed to do.
- Included in the petition Warden Sabatka-Rine received at the NSP is a request by inmates for microwaves in the housing units. Director Houston asked Ms. Sabatka-Rine to do some checking on this.
- The Department is looking into Spanish TV programming.

Facility Reports:

NCYF (Warden Mahr):

- They meet quarterly with their Labor/Management group.
- The OIC makes a decision as to whether or not staff should use O.C. when an inmate has a weapon.

NSP (Warden Sabatka-Rine):

- A parolee has been approved to come back and talk with inmates in substance abuse groups.

TSCI (Warden Britten):

- They currently have thirty custody vacancies.
- They are still on modified lockdown. It is reported that the Hispanics are trying to run the Native American inmates off the yard. It is believed that the Hispanics are not done with this and that this is definitely gang-related.
- Hobby orders are going up.
- Something needs to be added to the AR regarding tattooing gang symbols in hairstyles.

DEC (Warden Bakewell):

- There currently are 165 classification studies completed but no bed space.

OCC (Warden Kenney):

- They have exceeded capacity by a few inmates. They are going to reopen J1 around August or thereafter.

Comments by Deputy Director Hopkins:

- Radios, OC, etc. are still a priority for custody/unit management staff.
- Final checks for detainees prior to parole need to be done.
- We will allow sex offenders participate in the dog program at OCC and NCYF as they currently are but not at NSP or LCC at the request of sponsors.
- Government checks will not be frozen.
- Intel gathering will become a part of security audits.

From: Wayne, Larry
Sent: Friday, March 08, 2013 4:40 AM
To: Houston, Bob
Subject: Re: Mr. Nikko Jenkins, #59478

Bob, okay. Will do.

Sent from my Verizon Wireless 4G LTE DROID

"Houston, Bob" <Bob.Houston@nebraska.gov> wrote:

Larry,

We should join or form a 5 pm league at Pioneer this year.....I bet we could get 1 to 3 foresomes.

Mr Jenkins will need to engage in his own success. I believe we can set the groundwork toward that end with a multi disciplinary team and a divison of work in sequential order.

Let's talk this week about bringing a team together in the next couple, or three weeks.

Bob

Sent from my Samsung Galaxy Tab 10.1

"Wayne, Larry" <Larry.Wayne@nebraska.gov> wrote:

Bob, this will be a challenging issue. I will bring you up to speed on what I learned and then we can discuss our response. Hope you are feeling well following your surgery. I hit the driving range with Mario New season, same swings for both of us. Will have to get you out when you're done mending.

Sent from my Verizon Wireless 4G LTE DROID

"Houston, Bob" <Bob.Houston@nebraska.gov> wrote:

Good, Jerall, the Jenkins case will help us formulate our multi disciplinary approach to future cases of inmates discharging to the community from a high security unit. We will continue to explore housing options based upon Jenkins behavior. NDCS behavioral health professionals and parole staff will continue their work with Mr Jenkins.

Thanks,

Bob

Sent from my Samsung Galaxy Tab 10.1

Jerall Moreland <jmoreland@leg.ne.gov> wrote:

Bob,

I am glad you received a copy of the letter. A hard copy is being routed to Dr. Kohl. For clarification purposes, recently I was assigned this case, so the letter is actually from me with a copy to Marshall. I do look forward with working with Larry on this matter.
Jerall

On Tue, Mar 5, 2013 at 1:16 PM, Houston, Bob <Bob.Houston@nebraska.gov> wrote:

>

> Jerall,

>

> Thanks for copying me on this letter from Marshall. I am redirecting this
> issue to Larry Wayne as this is a classification issue based on a behavioral
> he

From: Wayne, Larry
Sent: Tuesday, March 12, 2013 9:01 AM
To: Wellage, Mark
Cc: White, Cameron; Foster, Kathy
Subject: RE: Coordination on Nikko Jenkins Case

OK thanks, Mark-

Larry Wayne
Deputy Director
Programs and Community Services
Nebraska Department of Correctional Services
P.O. Box 94661
Lincoln, NE 68532-4661
Office: [402 479-5721](tel:402-479-5721)

From: Wellage, Mark
Sent: Tuesday, March 12, 2013 8:59 AM
To: Wayne, Larry
Cc: White, Cameron; Foster, Kathy
Subject: Re: Coordination on Nikko Jenkins Case

The same records from douglas county basically said schizophrenia or malingering. Nikko was only told the first and the judge keyed in on that. Dr. baker has even considered a malingering diagnosis. I do not consider him to be majorly mentally ill. He does display symptoms and there is ample evidence that he is in control of his "symptoms" We have offered services and he refuses meds and refuses to participate in any therapy activities unless it is daily individual therapy. He appears focused on getting disability so he does not have to work and suing the department for maltreatment. He was seen by social work last week and dr. Wetzel will see him this week. We will coordinate a follow up although i am not hopeful as he resists anything that is not his specific agenda.

Sent from my Verizon Wireless 4G LTE DROID

"Wayne, Larry" <Larry.Wayne@nebraska.gov> wrote:

Thanks Cameron and Mark.

Sent from my Verizon Wireless 4G LTE DROID

"White, Cameron" <Cameron.White@nebraska.gov> wrote:

Mark,

Larry is fielding questions from the Ombudsman on the Jenkins case and his discharge planning. He is also getting questions such as if he has a prior dx of schizophrenia why isn't he considered MI now. My view is that we need to treat the symptoms that are currently presenting as opposed to those seen in the past. Please respond back to this email or phone Larry with the latest details. Thanks.

Cameron

Cameron S. White, Ph.D.
Behavioral Health Administrator, NDCS
Licensed Psychologist
Licensed Nursing Home Administrator

Phone: 402-479-5971
Facsimile: 402-479-5679
Email: cameron.white@nebraska.gov

NDCS Central Office
P.O. Box 94661
Lincoln, Nebraska 68550-94661

From: Wayne, Larry
Sent: Tuesday, March 12, 2013 11:40 AM
To: Foster, Kathy
Subject: RE: Mr. Nikko Jenkins, #59478

OK this is very helpful in formulating my response to The Ombudsman's Office. Thanks

Larry Wayne
Deputy Director
Programs and Community Services
Nebraska Department of Correctional Services
P.O. Box 94661
Lincoln, NE 68532-4661
Office: 402 479-5721

From: Foster, Kathy
Sent: Tuesday, March 12, 2013 10:36 AM
To: Wayne, Larry
Subject: RE: Mr. Nikko Jenkins, #59478

It depends. Since he is not going to be paroling, I typically help with discharge planning that a high needs inmate wants. Mr. Jenkins does not want to be discharged to the community. He wants to go to LRC. I told him that I would not be able to help with that, but could help him with a back-up plan in case he does not go to LRC.

Kathy Foster, LICSW
NDCS Director of Social Work
Nebraska State Penitentiary
4201 S. 14th Street
Lincoln, NE 68502
Phone: (402) 479-3094
Fax: (402) 479-3028

email: kathy.foster@nebraska.gov

resilience
WEAVING
advocacy

From: Wayne, Larry
Sent: Tuesday, March 12, 2013 9:03 AM

To: Foster, Kathy
Subject: RE: Mr. Nikko Jenkins, #59478

Kathy: will there be a final discharge plan for him?

Larry Wayne
Deputy Director
Programs and Community Services
Nebraska Department of Correctional Services
P.O. Box 94661
Lincoln, NE 68532-4661
Office: 402 479-5721

From: Foster, Kathy
Sent: Tuesday, March 12, 2013 8:13 AM
To: Wayne, Larry
Subject: RE: Mr. Nikko Jenkins, #59478

Larry, I had Mr. Jenkins sign releases for: Social Security Administration, Lancaster Medical Society, Medicaid, Community Mental Health Center (Lancaster), the Ombudsman, and Lori Jenkins (his mother). He agreed to disclosure of everything listed on the release except for HIV/AIDS information, progress notes, lab test results and radiology reports. I just noticed that he did NOT sign the release for the Ombudsman....

He only signed releases; there is no final discharge plan yet and I don't have anything to do with classification. I don't know what the Behavioral agreement is that is referenced.

I can get copies of the releases to you.

Kathy Foster, LICSW
NDCS Director of Social Work
4201 S. 14th Street
Lincoln, NE 68502
Phone: (402) 479-3094

Fax: (402) 479-3028
email: kathy.foster@nebraska.gov

From: Wayne, Larry
Sent: Monday, March 11, 2013 8:38 PM
To: Foster, Kathy
Subject: Fwd: Mr. Nikko Jenkins, #59478

Kathy, can you have this? If so, please send me copies as he has requested.. Thanks.

Sent from my Verizon Wireless 4G LTE DROID

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

Subject: Re: Mr. Nikko Jenkins, #59478
 From: Jerall Moreland <jmoreland@leg.ne.gov>
 To: "Wayne, Larry" <Larry.Wayne@nebraska.gov>
 CC:

Hello Larry,

Further follow-up from our phone call. It is my understanding that the social worker had Nikko sign the following forms listed below last week. Can we obtain a copy of those forms for our discussions involving this case and the larger systemic question.

Thanks.

- A. Final Discharge Plan
- B. Classification form
- C. Behavioral agreement
- D. Release of Information

Jerall

On Mon, Mar 11, 2013 at 3:53 PM, Jerall Moreland <jmoreland@leg.ne.gov> wrote:

> Larry,

>

> The Ombudsman's Office recognizes the difficulties presented the
 > Department in regards to Nikko Jenkins. In a conceptual view, we
 > believe analyzing the Departments goals and approaches pertaining to
 > the release of inmates directly from a high security facility, relates
 > to not only the Jenkins case, but, other inmates that for some reason
 > or other have not transitioned through the departments custody levels.
 > We believe that Director Houston has correctly identified one of the
 > concerns we have with Mr. Jenkins case, which in our opinion, is Mr.
 > Jenkins being released directly into the community after spending such
 > a long duration in a segregated
 > status at a high security unit, without a comprehensive discharge plan.

>

> As you know, recently a letter regarding the scheduled release of Mr.
 > Jenkins was presented to the Department. It would be good to sit
 > down to discuss possible discharge strategies when dealing with this
 > segment of your population. Additionally, it is my understanding
 > that a member of Behavioral health and a social worker has met with
 > Mr. Jenkins last week, would you be able to meet to discuss Mr.
 > Jenkins latest assessments, the most recent letter addressed to NDCS
 > concerning Mr. Jenkins, and discharge approaches dealing with his
 > release this week or next week?

>

> Jerall

>

>

> On Tue, Mar 5, 2013 at 9:52 PM, Houston, Bob <Bob.Houston@nebraska.gov> wrote:

>> Good, Jerall, the Jenkins case will help us formulate our multi disciplinary
 >> approach to future cases of inmates discharging to the community from a high
 >> security unit. We will continue to explore housing options based upon
 >> Jenkins behavior. NDCS behavioral health professionals and parole staff will
 >> continue their work with Mr Jenkins.

>>

>> Thanks,

>>
>> Bob
>>
>>
>>
>> Sent from my Samsung Galaxy Tab 10.1
>>
>> Jerall Moreland <jmoreland@leg.ne.gov> wrote:
>> Bob,
>>
>> I am glad you received a copy of the letter. A hard copy is being
>> routed to Dr. Kohl. For clarification purposes, recently I was
>> assigned this case, so the letter is actually from me with a copy to
>> Marshall. I do look forward with working with Larry on this matter.
>> Jerall
>>
>> On Tue, Mar 5, 2013 at 1:16 PM, Houston, Bob <Bob.Houston@nebraska.gov>
>> wrote:
>>>
>>> Jerall,
>>>
>>> Thanks for copying me on this letter from Marshall. I am redirecting this
>>> issue to Larry Wayne as this is a classification issue based on a
>>> behavioral
>>> health assessment. We are all working to have as good of an outcome
>>> possible
>>> for Mr. Jenkins and the Nebraska community.
>>>
>>> Thanks,
>>>
>>> Bob
>>>
>>>
>>>
>>> Sent from my Samsung Galaxy Tab 10.1
>>>
>>> Jerall Moreland <jmoreland@leg.ne.gov> wrote:
>>> Hello Dr. Kohl, Please see attached letter concerning Mr. Nikko
>>> Jenkins. I will also send a hard copy in the mail. Thanks. Jerall
>>>
>>>
>>>
>>>
>>>
>>> Jerall Moreland, Assistant Ombudsman
>>> Ombudsman's Office
>>> 402-471-2035
>>> jmoreland@leg.gov.ne

--
Jerall Moreland, Assistant Ombudsman
Ombudsman's Office
402-471-2035
jmoreland@leg.gov.ne

From: Jansen, James
Sent: Friday, March 15, 2013 12:02 PM
To: Baker, Norma; Bassinger, Adam; Doeden, Mary; Draeger, Alicia; Falk, Andrew; Higgins, John; Robertson, Timothy; Roede, Lucas; Rule, Aaron; Schernikau, Bradley; Steadman, Michael; Taylor, Jason; Weiner, Joseph; Zander, Ida
Subject: FW: TSCI Inmate Nikko Jenkins #59478

FYI- on Greer

From: Mollhoff, Chris
Sent: Friday, March 15, 2013 12:01 PM
To: Jansen, James
Subject: RE: TSCI Inmate Nikko Jenkins #59478

Current Level 2D
 Next Level 3/28/13

Thanks CW Mollhoff

From: Jansen, James
Sent: Friday, March 15, 2013 11:57 AM
To: Mollhoff, Chris
Subject: FW: TSCI Inmate Nikko Jenkins #59478

Could you do me a favor, I sent this to Edison today:

Please send me addendum, level/transformation info, and restriction information on

Thanks

From: Jansen, James
Sent: Thursday, March 14, 2013 11:49 AM
To: Rouf, Mel; Edison, Michael
Cc: Sherman, Shawn; Britten, Fred; Capps, Michele
Subject: FW: TSCI Inmate Nikko Jenkins #59478

Attached is Jenkins #59478 current addendum, he is on Level D3 as of 2/27/2013. He was given the Orientation Transformation packet on 2/27/2013, but has not completed it yet.

Current Restriction Information

Jenkins, Nikko #59478 SMU B7 **SHARPS/FULL RESTRAINT/DOUBLE ESCORT**

- 2-21-13 Taken off Limited Property
- 2-16-13 Emergency grievance to Warden Britten requesting, "Emergency Psychiatric Hospitalization" and stating, "I am called to wage the war of Revelations upon this Earth Eat Human Beings"
- 2-7-13 Off Mattress Restriction
- 2-2-13 Broke sprinkler head in cell
- 1-26-13 Refused staff directives to return Limited Property Items.
- 1-25-13 Removed from Plan A remain on 15 min checks
- 1-18-13 Cut face in cell and destroyed mattress, placed on plan A
- 1-14-13 Removed from plan. Placed back in F33.
- 1-10-13 Covered cell window with state issued clothing

Let me know if you need anything else.

Thanks

From: Sherman, Shawn
Sent: Thursday, March 14, 2013 11:23 AM
To: Rouf, Mel
Cc: Jansen, James; Wilken, Kevin; Morris, Luke
Subject: RE: TSCI Inmate Nikko Jenkins #59478

OK.

We are not going to do class notes. Jansen we need a transfer order before 1300hrs.

Luke, we will need a separate vehicle for this one.

We ARE going to do this.

Jansen, do not let him know. He will figure it out tomorrow.

From: Rouf, Mel
Sent: Thursday, March 14, 2013 11:15 AM
To: Sherman, Shawn
Subject: FW: TSCI Inmate Nikko Jenkins #59478

This is what I know.

From: Sabatka-Rine, Diane
Sent: Thursday, March 14, 2013 10:39 AM
To: Rouf, Mel; Cruickshank, Rich
Subject: FW: TSCI Inmate Nikko Jenkins #59478

FYI. This is the first time I have heard about this individual transferring here. If necessary, perhaps we can work out a trade with LCC for bed space reasons. Thanks!

From: Wayne, Larry
Sent: Thursday, March 14, 2013 10:25 AM
To: Sabatka-Rine, Diane; Britten, Fred
Cc: Houston, Bob; Hopkins, Frank; Moreland, Jerall; Weilage, Mark; Foster, Kathy; Young, Konda
Subject: TSCI Inmate Nikko Jenkins #59478

We are attempting to situate Inmate Jenkins in the best possible position for his upcoming discharge on June 30, 2013. He has been a challenging individual to deal with. To this end we've agreed with The Ombudsman's Office for two things:

- 1.) We will move Mr. Jenkins from AC at TSCI's Special Management Unit to AC at NSP's Control Unit. This will provide the fresh start in segregation locations which Mr. Jenkins has requested.
- 2.) Dr. Weilage and Kathy Foster will meet with Jerall Moreland and I to discuss whatever other discharge planning may be appropriate for Mr. Jenkins. Much effort has already been expended in this area, particularly by Dr. Weilage and Ms. Foster. Our current thoughts are Mr. Jenkins will likely discharge from NSP's Control Unit. If there are plans we can make for returning him more safely to the community in June, we will explore these. Ms. Young will coordinate this meeting.

Please let me know if you have questions or need clarification. Thanks.

Larry Wayne
Deputy Director
Programs and Community Services
Nebraska Department of Correctional Services
P.O. Box 94661
Lincoln, NE 68532-4661
Office: 402 479-5721

152

From: Wayne, Larry
Sent: Friday, March 15, 2013 5:54 AM
To: Sabatka-Rine, Diane
Cc: Britten, Fred; Hopkins, Frank
Subject: Re: TSCI Inmate Nikko Jenkins #59478

Diane and everyone else, thanks very much!

Sent from my Verizon Wireless 4G LTE DROID

"Sabatka-Rine, Diane" <Diane.Sabatka-Rine@nebraska.gov> wrote:

Larry:

NSP and TSCI staff have communicated and have made arrangements to transfer JENKINS from TSCI to NSP on Friday, March 15th. Please let us know if you need anything further relative to this matter.

From: Wayne, Larry
Sent: Thursday, March 14, 2013 10:25 AM
To: Sabatka-Rine, Diane; Britten, Fred
Cc: Houston, Bob; Hopkins, Frank; Moreland, Jerall; Wellage, Mark; Foster, Kathy; Young, Konda
Subject: TSCI Inmate Nikko Jenkins #59478

We are attempting to situate Inmate Jenkins in the best possible position for his upcoming discharge on June 30, 2013. He has been a challenging individual to deal with. To this end we've agreed with The Ombudsman's Office for two things:

- 1.) We will move Mr. Jenkins from AC at TSCI's Special Management Unit to AC at NSP's Control Unit. This will provide the fresh start in segregation locations which Mr. Jenkins has requested.
- 2.) Dr. Wellage and Kathy Foster will meet with Jerall Moreland and I to discuss whatever other discharge planning may be appropriate for Mr. Jenkins. Much effort has already been expended in this area, particularly by Dr. Wellage and Ms. Foster. Our current thoughts are Mr. Jenkins will likely discharge from NSP's Control Unit. If there are plans we can make for returning him more safely to the community in June, we will explore these. Ms. Young will coordinate this meeting.

Please let me know if you have questions or need clarification. Thanks.

Larry Wayne
Deputy Director
Programs and Community Services
Nebraska Department of Correctional Services
P.O. Box 94661
Lincoln, NE 68532-4661
Office: 402 479-5721

From: Moreland, Jerall
Sent: Friday, March 15, 2013 10:49 AM
To: Wayne, Larry
Cc: Lux, Marshall
Subject: Re: TSCI Inmate Nikko Jenkins #59478

Larry,

Thank you for moving forward with the transfer consideration for Mr. Nikko Jenkins. I hope the action proves to be positive, but, realize we are still dealing with a challenging situation. Thanks for the comments and review on the placement of Mr. Jenkins and the Ombudsman's Office looks forward to further discussion on strategies pertaining to his discharge plan.

As you know, recently, Director Houston and I communicated on several issues surrounding Jenkins. It is the Ombudsman's position that Director Houston has correctly identified one of the concerns we have with Jenkins cased, which in our opinion, is Mr. Jenkins being released directly into the community after spending such a long duration in a segregated status at a high security unit, without a comprehensive discharge plan.

Essentially, we believe a system to facilitate the return to lower levels of custody, to those housed in long-term segregation is important. Basically, it seems a person serving a sentence who would otherwise be released directly to the community from long-term segregated housing, should be placed in a less restrictive setting for the final months of confinement. Except in compelling circumstances. Our expectations reviewed for progress.

In this case, it seems a question needing to be addressed is if there is a compelling reason to not house Mr. Jenkins in a least restrictive setting, as he is closer to his release date. Maybe there is, but where is that setting at (transition unit, minimum facility, medium facility, Community Corrections, etc)?

In closing, I bring these elements to your attention for your thoughts. As you recently cancelled the meeting with Kathy Foster, Mark Weilage, you and I, that was scheduled for next Wednesday, I wanted to bring this to your attention. I will await to hear from you concerning rescheduling?

Jerall

On Thu, Mar 14, 2013 at 10:25 AM, Wayne, Larry <Larry.Wayne@nebraska.gov> wrote:

- > We are attempting to situate Inmate Jenkins in the best possible
- > position for his upcoming discharge on June 30, 2013. He has been a
- > challenging individual to deal with. To this end we've agreed with The
- > Ombudsman's Office for two things:
- >
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- >
- > 1.) We will move Mr. Jenkins from AC at TSCI's Special Management Unit
- > to AC at NSP's Control Unit. This will provide the fresh start in
- > segregation locations which Mr. Jenkins has requested.
- >
- >

- >
- > 2.) Dr. Wellage and Kathy Foster will meet with Jerall Moreland and I to discuss whatever other discharge planning may be appropriate for Mr. Jenkins. Much effort has already been expended in this area, particularly by Dr. Wellage and Ms. Foster. Our current thoughts are Mr. Jenkins will likely discharge from NSP's Control Unit. If there are plans we can make for returning him more safely to the community in June, we will explore these. Ms. Young will coordinate this meeting.

- >
- >
- >
- > Please let me know if you have questions or need clarification. Thanks.

- >
- >
- >
- > Larry Wayne
- >
- > Deputy Director
- >
- > Programs and Community Services
- >
- > Nebraska Department of Correctional Services
- >
- > P.O. Box 94661
- >
- > Lincoln, NE 68532-4661
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- > Office: 402 479-5721
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Jerall Moreland, Assistant Ombudsman
Ombudsman's Office
402-471-2035
jmoreland@leg.gov.ne

From: Wayne, Larry
Sent: Friday, March 15, 2013 5:43 AM
To: Houston, Bob
Subject: Fwd: Nikko Jenkins -

Bob, you and I discussed this meeting yesterday. It is to set up a discharge plan for Mr. Jenkins. No one will be asked to defend anything. Do you want me to ask them again to attend?

Sent from my Verizon Wireless 4G LTE DROID

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

Subject: Re: Nikko Jenkins -
From: "Green, George" <George.Green@nebraska.gov>
To: "Wayne, Larry" <Larry.Wayne@nebraska.gov>
CC: "Kohl, Randy" <Randy.Kohl@nebraska.gov>

I agree. Treatment Staff should not be called upon to spend their resources defending themselves.

Connected by DROID on Verizon Wireless

-----Original message-----

From: "Wayne, Larry" <Larry.Wayne@nebraska.gov>
To: "Wayne, Larry" <Larry.Wayne@nebraska.gov>
Cc: "Kohl, Randy" <Randy.Kohl@nebraska.gov>, "Green, George" <George.Green@nebraska.gov>
Sent: Thu, Mar 14, 2013 21:32:39 GMT+00:00
Subject: FW: Nikko Jenkins -

Larry,

I'm not sure we want to meet with Jerall about Jenkins. I recommend that this is kept to email correspondence based on recent meetings. Any questions should be able to be covered in writing. Thanks.

Cameron

Cameron S. White, Ph.D.
Behavioral Health Administrator, NDCS
Licensed Psychologist
Licensed Nursing Home Administrator

Facsimile: 402-479-5679
e-mail: cameron.white@nebraska.gov

NDCS Central Office
P.O. Box 94661
Lincoln, NE 68509-4661

From: Wayne, Larry
Sent: Friday, March 22, 2013 4:14 PM
To: Weilage, Mark
Subject: RE:

OK thanks. gets out sooner, but possibly represents greater behavioral challenges.

Larry Wayne
 Deputy Director
 Programs and Community Services
 Nebraska Department of Correctional Services
 P.O. Box 94661
 Lincoln, NE 68532-4661
 Office: 402 479-5721

From: Wellage, Mark
Sent: Friday, March 22, 2013 3:19 PM
To: Wayne, Larry
Cc: Foster, Kathy; Houston, Bob; Kohl, Randy; White, Cameron
Subject: Re:

I am already working with mr . I should be able to give an update on both next week

Sent from my Verizon Wireless 4G LTE DROID

"Wayne, Larry" <Larry.Wayne@nebraska.gov> wrote:

Dr. Wellage and Ms. Foster: thanks for your input and contributions to our meeting earlier this week concerning discharge planning for NSP Control Center Inmate Nikko Jenkins #59478. I reported our success to Director Houston who's asked we employ a similar strategy for discharge planning with other inmates who are approaching mandatory discharge and are confined in segregation. We discussed it our meeting this past week. His mandatory discharge is in November of this year. Another inmate who's come to my attention is [redacted] who's confined in TSCI's SMU and is scheduled for mandatory discharge in October of this year.

We discussed Mark having a mental status assessment performed on [redacted] and advising us accordingly. This should also occur for [redacted]. I suggest after we have an idea on the mental status of these two men we should then proceed from there with Social Services visiting with them as well to discuss specific discharge planning; up to, and after their mandatory release dates. We could then discuss this plan among the 3 of us or with whomever else you'd suggest. I could then simply advise the Ombudsman's Office of the outcome (they have inquired to me about both inmates, and I've advised them we'd proceed something along the lines suggested here.)

I'm open to other suggested options, and am grateful for the efforts both of you provided thus far. I believe this goes much further in protecting the public and attempting to help these more challenging and high risk inmates to have a better chance of success upon release.

Larry Wayne
Deputy Director
Programs and Community Services
Nebraska Department of Correctional Services
P.O. Box 94661
Lincoln, NE 68532-4661
Office: 402 479-5721

From: Wayne, Larry
Sent: Thursday, April 11, 2013 12:29 PM
To: Sabatka-Rine, Diane
Subject: RE: Nikko Jenkins #59478

Thanks Diane-

Larry Wayne
Deputy Director
Programs and Community Services
Nebraska Department of Correctional Services
P.O. Box 94661
Lincoln, NE 68532-4661
Office: 402 479-5721

From: Sabatka-Rine, Diane
Sent: Thursday, April 11, 2013 10:42 AM
To: Wayne, Larry
Cc: Houston, Bob; Hopkins, Frank; Wellage, Mark; Foster, Kathy
Subject: Nikko Jenkins #59478

As an update, JENKINS was transferred from TSCI to NSP on March 15, 2013. Since his arrival, his behavior in the Control Unit has been appropriate. We reviewed and approved him for the Transition Confinement program at this morning's Institutional Classification Committee. The next Transition Confinement class will not begin for a few more weeks, so JENKINS will remain in the Control Unit until the program begins. Given his July 30, 2013 Tentative Release Date, he will have the opportunity to work through most of the Transition Confinement Program before he is discharged from NDCS.

If you have questions or concerns relative to this matter, please let me know. Thank you.

From: Wayne, Larry
Sent: Thursday, March 14, 2013 10:25 AM
To: Sabatka-Rine, Diane; Britten, Fred
Cc: Houston, Bob; Hopkins, Frank; Moreland, Jerall; Wellage, Mark; Foster, Kathy; Young, Konda
Subject: TSCI Inmate Nikko Jenkins #59478

We are attempting to situate Inmate Jenkins in the best possible position for his upcoming discharge on June 30, 2013. He has been a challenging individual to deal with. To this end we've agreed with The Ombudsman's Office for two things:

- 1.) We will move Mr. Jenkins from AC at TSCI's Special Management Unit to AC at NSP's Control Unit. This will provide the fresh start in segregation locations which Mr. Jenkins has requested.
- 2.) Dr. Wellage and Kathy Foster will meet with Jerall Moreland and I to discuss whatever other discharge planning may be appropriate for Mr. Jenkins. Much effort has already been expended in this area, particularly by Dr. Wellage and Ms. Foster. Our current thoughts are Mr. Jenkins will likely discharge from NSP's Control Unit. If

there are plans we can make for returning him more safely to the community in June, we will explore these. M.G.O
Young will coordinate this meeting.

Please let me know if you have questions or need clarification. Thanks.

Larry Wayne
Deputy Director
Programs and Community Services
Nebraska Department of Correctional Services
P.O. Box 94661
Lincoln, NE 68532-4661
Office: 402 479-5721

From: Wayne, Larry
Sent: Wednesday, April 24, 2013 11:08 AM
To: Weilage, Mark
Subject: RE: TSCI Inmate Nikko Jenkins #59478

Thanks Mark.

Larry Wayne
 Deputy Director
 Programs and Community Services
 Nebraska Department of Correctional Services
 P.O. Box 94661
 Lincoln, NE 68532-4661
 Office: 402 479-5721

From: Weilage, Mark
Sent: Tuesday, April 23, 2013 2:46 PM
To: Wayne, Larry
Subject: Fwd: TSCI Inmate Nikko Jenkins #59478

my discussion with segregation staff yesterday seem to indicate that he would go to the next available bed in the transition program....

Sent from my Verizon Wireless 4G LTE DROID

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

Subject: Re: TSCI Inmate Nikko Jenkins #59478
From: Jerall Moreland <jmoreland@leg.ne.gov>
To: "Wayne, Larry" <Larry.Wayne@nebraska.gov>
CC: "Lux, Marshall" <mlux@leg.ne.gov>, "Houston, Bob" <Bob.Houston@nebraska.gov>, "Hopkins, Frank" <Frank.Hopkins@nebraska.gov>, "Sabatka-Rine, Diane" <Diane.Sabatka-Rine@nebraska.gov>, "White, Cameron" <Cameron.White@nebraska.gov>, "Weilage, Mark" <Mark.Weilage@nebraska.gov>, "Foster, Kathy" <kathy.foster@nebraska.gov>, "Davis III, James" <jdavis@leg.ne.gov>, "Schmeits, Sean" <sschmeits@leg.ne.gov>, Cynthia Grandberry <cgrandberry@leg.ne.gov>

Larry, I have added a couple of communications that the Ombudsman's Office has had concerning Mr. Jenkins. The response from you in this matter, in our opinion (James Davis, Sean Schmeits and I) does not capture the meeting we had on March 20, 2013. This is unfortunate. As you know, we discussed time lines and action items to assure Mr. Jenkins moved through the system. One of the reasons for the meeting, in any stretch of the imagination, was to make sure issues such as institutional resources, time and any other reasons outside of Mr. Jenkins being uncooperative wouldn't negatively effect the transitional plan. Therefore, It appears the only thing left to discuss with this matter is that the Department recognize the need to follow the transition plan discussed at the meeting.

Jerall Moreland, Assistant Ombudsman
Ombudsman's Office
402-471-2035
Jmoreland@leg.gov.ne



On Tue, Apr 23, 2013 at 2:11 PM, Wayne, Larry <Larry.Wayne@nebraska.gov> wrote:

Jerall: I believe we did discuss timeframes in general given his July 30 release, but we did not state he'd be in any one place at any particular time. I believe Dr. Weilage has, or will be seeing Mr. Jenkins soon. I also know Ms. Foster has seen him. Finally, I did visit with Warden Sabatka-Rine and who indicated Mr. Jenkins has been doing well and was being considered for further classification review with movement as appropriate. I specified to her this should occur in line with institutional resources for time and space along with trying to situate Mr. Jenkins to have the best chance of success now and after his upcoming release. Let me know if you wish to discuss further.

Larry Wayne

Deputy Director

Programs and Community Services

Nebraska Department of Correctional Services

P.O. Box 94861

Lincoln, NE 68532-4861

Office: 402 479-5721

From: Jerall Moreland [mailto:jmoreland@leg.ne.gov]
Sent: Tuesday, April 23, 2013 12:43 PM
To: Wayne, Larry
Cc: Lux, Marshall; Houston, Bob
Subject: Re: TSCI Inmate Nikko Jenkins #59478

Larry, I just found out that you attempted to contact me on several occasions yesterday April 22, 2013 concerning Mr. Nikko Jenkins. Thank you, as I was not aware of your attempt prior to the e-mail. I look forward to discussing the points concerning Mr. Jenkins matter with you further. Jerall

On Tue, Apr 23, 2013 at 10:16 AM, Jerall Moreland <jmoreland@leg.ne.gov> wrote:

Larry,

I received a update from Warden Sabatka-Rine on Mr. Nikko Jenkins approximately 10 days ago. Essentially, the report I received from Warden Sabatka-Rine is that Mr. Jenkins has been appropriate while housed under AC. As you know, the Ombudsman's Office and DCS representatives met on March 20, 2013, to discuss an appropriate transition plan for Mr. Jenkins, who is scheduled to be discharged in June of 2013.

During the meeting we were told that after 30 more days on AC, Mr. Jenkins would transition to the NSP transition unit barring any compelling reasons. It has been 30 days since the meeting and still Mr. Jenkins has not been transferred as agreed upon. We would like to see the Department carry out the actions that the Department committed to put in place.

Additionally, during the meeting, we were told that Mr. Jenkins would be seen by Mental Health every 15 days. Again, it is my understanding that these actions were not carried out as well. However, I can share that Kathy Foster the DCS Social Worker has carried out all of her actionable items and I commend her for that.

I have attempted to contact you concerning this issue through messages left at your office and no response. Additionally, Warden Sabatka-Rine was to speak to you concerning the issue and get back to me. At this time, I would ask that you respond to the actions not carried out to date, and let me know if the Department intends to meet the objectives discussed for Mr. Jenkins transition plan?

Thanks, Jerall

On Fri, Mar 15, 2013 at 10:48 AM, Jerall Moreland <jmoreland@leg.ne.gov> wrote:

Larry,

Thank you for moving forward with the transfer consideration for Mr. Nikko Jenkins. I hope the action proves to be positive, but, realize

we are still dealing with a challenging situation. Thanks for the comments and review on the placement of Mr. Jenkins and the Ombudsman's Office looks forward to further discussion on strategies pertaining to his discharge plan.

As you know, recently, Director Houston and I communicated on several issues surrounding Jenkins. It is the Ombudsman's position that Director Houston has correctly identified one of the concerns we have with Jenkins cased, which in our opinion, is Mr. Jenkins being released directly into the community after spending such a long duration in a segregated status at a high security unit, without a comprehensive discharge plan.

Essentially, we believe a system to facilitate the return to lower levels of custody, to those housed in long-term segregation is important. Basically, it seems a person serving a sentence who would otherwise be released directly to the community from long-term segregated housing, should be placed in a less restrictive setting for the final months of confinement. Except in compelling circumstances. Our expectations reviewed for progress.

In this case, it seems a question needing to be addressed is if there is a compelling reason to not house Mr. Jenkins in a least restrictive setting, as he is closer to his release date. Maybe there is, but where is that setting at (transition unit, minimum facility, medium facility, Community Corrections, etc)?

In closing, I bring these elements to your attention for your thoughts. As you recently cancelled the meeting with Kathy Foster, Mark Weilage, you and I, that was scheduled for next Wednesday, I wanted to bring this to your attention. I will await to hear from you concerning rescheduling?

Jerall

--

Jerall Moreland, Assistant Ombudsman
Ombudsman's Office
402-471-2035
Jmoreland@leg.gov.ne

From: Moreland, Jerall
Sent: Wednesday, April 24, 2013 3:36 PM
To: Wayne, Larry
Subject: Re: FW: TSCI Inmate Nikko Jenkins #59478

Larry: Thanks for the update on Nikko Jenkins. The incorporation of a lower restrictive environment will hopefully assist with the step down approach needed, before any upcoming release into society.

On Wed, Apr 24, 2013 at 1:13 PM, Wayne, Larry <Larry.Wayne@nebraska.gov> wrote:

Jerall: here's the latest we have on Nikko Jenkins' status.

Larry Wayne

Deputy Director

Programs and Community Services

Nebraska Department of Correctional Services

P.O. Box 94661

Lincoln, NE 68532-4661

Office: [402 479-5721](tel:402-479-5721)

From: Sabatka-Rine, Diane
Sent: Wednesday, April 24, 2013 11:26 AM
To: Wayne, Larry
Subject: RE: TSCI Inmate Nikko Jenkins #59478

Larry:

It turns out that I was misinformed on when the next Transition Confinement group would begin. On April 11th, I indicated that it would be a "few more weeks" I learned today that there are 5 weeks left in the program for the current group – which means the next class will not begin until the first part of June (at the earliest). Given this information, I have asked Deputy Warden to ensure that Mr. Jenkins is moved from the Control Unit to Housing Unit #4 no later than April 30th as part of his "transition" plan.

Please let me know if you have other questions or need additional information. Thanks!

From: Wayne, Larry
Sent: Wednesday, April 24, 2013 11:08 AM
To: Moreland, Jerall
Cc: Houston, Bob; Hopkins, Frank; Sabatka-Rlne, Diane; Foster, Kathy

Subject: FW: TSCI Inmate Nikko Jenkins #59478

Jerall: I'm sorry our opinions and expectations don't match up. We agreed we want the same things for Mr. Jenkins. I've attempted to call you several times (again today) concerning the dispute about how fast those things should occur. I know you've attempted to call me when I was away from my desk as well. This seems to be a reoccurring theme between our agencies. I assure you we'd like to go faster also, but often the problem of having too many inmates coupled with not enough time to make things happen quickly as we'd like is frustrating for me as well. As I indicated in my earlier correspondence with you Mr. Jenkins has done well and is going to the next bed in Transition Confinement. This could be today or tomorrow or as quickly we can get to it. I also expect Kathy Foster will continue meeting with him for discharge planning as needed.

Please feel free to call me if you wish.

Larry Wayne

Deputy Director

Programs and Community Services

Nebraska Department of Correctional Services

P.O. Box 94661

Lincoln, NE 68532-4661

Office: 402 479-5721

From: Wayne, Larry
Sent: Tuesday, April 23, 2013 2:41 PM
To: Wayne, Larry
Subject: FW: TSCI Inmate Nikko Jenkins #59478

Larry Wayne

Deputy Director

Programs and Community Services

Nebraska Department of Correctional Services

P.O. Box 94661

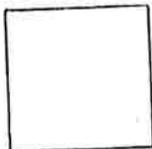
Lincoln, NE 68532-4661

Office: 402 479-5721

From: Jerall Moreland [<mailto:jmoreland@leg.ne.gov>]
Sent: Tuesday, April 23, 2013 2:39 PM
To: Wayne, Larry
Cc: Lux, Marshall; Houston, Bob; Hopkins, Frank; Sabatka-Rine, Diane; White, Cameron; Wellage, Mark; Foster, Kathy; Davis III, James; Schmelts, Sean; Cynthia Grandberry
Subject: Re: TSCI Inmate NIKKO JENKINS #59478

Larry, I have added a couple of communications that the Ombudsman's Office has had concerning Mr. Jenkins. The response from you in this matter, in our opinion (James Davis, Sean Schmeits and I) does not capture the meeting we had on March 20, 2013. This is unfortunate. As you know, we discussed time lines and action items to assure Mr. Jenkins moved through the system. One of the reasons for the meeting, in any stretch of the imagination, was to make sure issues such as institutional resources, time and any other reasons outside of Mr. Jenkins being uncooperative wouldn't negatively effect the transitional plan. Therefore, It appears the only thing left to discuss with this matter is that the Department recognize the need to follow the transition plan discussed at the meeting.

Jerall Moreland, Assistant Ombudsman
 Ombudsman's Office
 402-471-2035
Jmoreland@leg.gov.ne



On Tue, Apr 23, 2013 at 2:11 PM, Wayne, Larry <Larry.Wayne@nebraska.gov> wrote:

Jerall: I believe we did discuss timeframes in general given his July 30 release, but we did not state he'd be in any one place at any particular time. I believe Dr. Wellaga has, or will be seeing Mr. Jenkins soon. I also know Ms. Foster has seen him. Finally, I did visit with Warden Sabatka-Rine and who indicated Mr. Jenkins has been doing well and was being considered for further classification review with movement as appropriate. I specified to her this should occur in line with institutional resources for time and space along with trying to situate Mr. Jenkins to have the best chance of success now and after his upcoming release. Let me know if you wish to discuss further.

Larry Wayne

Deputy Director

Programs and Community Services

Nebraska Department of Correctional Services

P.O. Box 94661

Lincoln, NE 68532-4661

Office: 402-479-5721

From: Jerall Moreland (mailto:jmoreland@leg.ne.gov)
Sent: Tuesday, April 23, 2013 12:43 PM
To: Wayne, Larry
Cc: Lux, Marshall; Houston, Bob
Subject: Re: TSCI Inmate Nikko Jenkins #59478

Larry, I just found out that you attempted to contact me on several occasions yesterday April 22, 2013 concerning Mr. Nikko Jenkins. Thank you, as I was not aware of your attempt prior to the e-mail. I look forward to discussing the points concerning Mr. Jenkins matter with you further. Jerall

On Tue, Apr 23, 2013 at 10:16 AM, Jerall Moreland <jmoreland@leg.ne.gov> wrote:

Larry,

I received a update from Warden Sabatka-Rine on Mr. Nikko Jenkins approximately 10 days ago. Essentially, the report I received from Warden Sabatka-Rine is that Mr. Jenkins has been appropriate while housed under AC. As you know, the Ombudsman's Office and DCS representatives met on March 20, 2013, to discuss an appropriate transition plan for Mr. Jenkins, who is scheduled to be discharged in June of 2013.

During the meeting we were told that after 30 more days on AC, Mr. Jenkins would transition to the NSP transition unit barring any compelling reasons. It has been 30 days since the meeting and still Mr. Jenkins has not been transferred as agreed upon. We would like to see the Department carry out the actions that the Department committed to put in place.

Additionally, during the meeting, we were told that Mr. Jenkins would be seen by Mental Health every 15 days. Again, it is my understanding that these actions were not carried out as well. However, I can share that Kathy Foster the DCS Social Worker has carried out all of her actionable items and I commend her for that.

I have attempted to contact you concerning this issue through messages left at your office and no response. Additionally, Warden Sabatka-Rine was to speak to you concerning the issue and get back to me. At this time, I would ask that you respond to the actions not carried out to date, and let me know if the Department intends to meet the objectives discussed for Mr. Jenkins transition plan?

Thanks, Jerall

On Fri, Mar 15, 2013 at 10:48 AM, Jerall Moreland <jmoreland@leg.nc.gov> wrote:

Larry,

Thank you for moving forward with the transfer consideration for Mr. Nikko Jenkins. I hope the action proves to be positive, but, realize we are still dealing with a challenging situation. Thanks for the comments and review on the placement of Mr. Jenkins and the Ombudsman's Office looks forward to further discussion on strategies pertaining to his discharge plan.

As you know, recently, Director Houston and I communicated on several issues surrounding Jenkins. It is the Ombudsman's position that Director Houston has correctly identified one of the concerns we have with Jenkins cased, which in our opinion, is Mr. Jenkins being released directly into the community after spending such a long duration in a segregated status at a high security unit, without a comprehensive discharge plan.

Essentially, we believe a system to facilitate the return to lower levels of custody, to those housed in long-term segregation is important. Basically, it seems a person serving a sentence who would otherwise be released directly to the community from long-term segregated housing, should be placed in a less restrictive setting for the final months of confinement. Except in compelling circumstances. Our expectations reviewed for progress.

In this case, it seems a question needing to be addressed is if there is a compelling reason to not house Mr. Jenkins in a least restrictive setting, as he is closer to his release date. Maybe there is, but where is that setting at (transition unit, minimum facility, medium facility, Community Corrections, etc)?

In closing, I bring these elements to your attention for your

thoughts. As you recently cancelled the meeting with Kathy Foster, Mark Weilage, you and I, that was scheduled for next Wednesday, I wanted to bring this to your attention. I will await to hear from you concerning rescheduling?

Jerall

--

Jerall Moreland, Assistant Ombudsman
Ombudsman's Office
402-471-2035
Jmoreland@leg.gov.ne

--

Jerall Moreland, Assistant Ombudsman
Ombudsman's Office
402-471-2035
Jmoreland@leg.gov.ne

From: Richards, Amity B. (DC Atty Crim) <Amity.Richards@douglascounty-ne.gov>
Sent: Monday, April 29, 2013 8:19 AM
To: Wayne, Larry
Cc: Houston, Bob
Subject: RE: Nikko Jenkins
Attachments: Niss Mail.pdf; Nissa Mail 2.pdf

Larry,

Here is the attachments that Bob meant to forward. Thanks!

Amity

From: Wayne, Larry [<mailto:Larry.Wayne@nebraska.gov>]
Sent: Monday, April 29, 2013 8:03 AM
To: Houston, Bob
Cc: Richards, Amity B. (DC Atty Crim); White, Cameron; Foster, Kathy; Beadle, Brenda D. (DC Atty Criminal); Jones, Nissa M. (DC Atty Criminal)
Subject: Re: Nikko Jenkins

Bob, my note from you does not include the attachment. Thanks

Sent from my Verizon Wireless 4G LTE DROID

"Houston, Bob" <Bob.Houston@nebraska.gov> wrote:

Got it, Amity, thanks.

Larry, Kathy and Cameron.....for your consideration as we prepare Jenkins for release.

Thanks,

Bob

Sent from my Samsung Galaxy Tab 10.1

"Richards, Amity B. (DC Atty Crim)" <Amity.Richards@douglascounty-ne.gov> wrote:
Mr. Houston:

Please see the attached documents Nissa Jones received from Nikko Jenkins, Inmate #59478.

Amity Richards

From: Houston, Bob
Sent: Sunday, April 28, 2013 10:00 PM
To: Foster, Kathy; Kroeger, Concha
Subject: RE: Nikko Jenkins

Concha.....please remind me to send the attachment to Kathy.....thanks!! Bob

Sent from my Samsung Galaxy Tab 10.1
"Foster, Kathy" <kathy.foster@nebraska.gov> wrote:
Director, I did not get the attachment.

Kathy Foster, LICSW
NDCS Director or Social Work
4201 S. 14th Street
Lincoln, NE 68502
Phone: (402) 479-3094

Fax: (402) 479-3028
Email: kathy.foster@nebraska.gov

From: Houston, Bob
Sent: Saturday, April 27, 2013 8:00 AM
To: amity.richards@douglascounty-ne.gov; Wayne, Larry; White, Cameron; Foster, Kathy
Cc: brenda.beadle@douglascounty-ne.gov; nissa.jones@douglascounty-ne.gov
Subject: Re: Nikko Jenkins

Got it, Amity, thanks.

Larry, Kathy and Cameron.....for your consideration as we prepare Jenkins for release.

Thanks,

Bob

Sent from my Samsung Galaxy Tab 10.1

"Richards, Amity B. (DC Atty Crim)" <Amity.Richards@douglascounty-ne.gov> wrote:

Mr. Houston:

174

Please see the attached documents Nissa Jones received from Nikko Jenkins, Inmate #59478.

**Amity Richards
Trial Assistant
Douglas County Attorney
100 Hall of Justice
Omaha, NE 68183
(402)444-3565**

On March 8, 2013, Lori Jenkins, Petitioner to the Johnson County Attorney for Nikko A. Jenkins (matr# 59478, emergency protection order to the Nebraska Mental Health Board. In accordance to Nebraska Revised Statutes 83-356, Mentally ill persons; mistreatment; liability; penalty. Any person taking care of a mentally ill person, and restraining such a person, either with or without authority, who shall treat such person with wanton severity, harshness or cruelty, or shall in any way abuse such a person, shall be guilty of a Class V misdemeanor and shall also be liable in an action for all damages sustained by such mentally ill person.

Nikko A. Jenkins 4 Large Wounds & 40 Stitches total while in the custody of the Tecumseh State Corrections.

Nikko A. Jenkins LD 59478, P. O Box 900, Tecumseh Nebraska 68450.
Tecumseh State Corrections

Names of Next of Kin and Power of Attorney:

Names & Addresses of Psychiatric Doctors:

Dr. Kathy Stransberg, Tecumseh State Corrections, P.O Box 900, Tecumseh
Nebraska 68450
Dr. Natalie Baker, Tecumseh State Corrections, P.O Box 900, Tecumseh
Nebraska 68450
Melinda Pearson, Tecumseh State Corrections, P.O Box 900, Tecumseh
Nebraska 68450
Dr. Olivetto, Douglas County Corrections, 710 S 17th Str. Omaha Nebraska
68102
Dr. Denise Gaines, Douglas County Corrections, 710 S 17th Str. Omaha
Nebraska 68102

Probable Cause:

1. Nikko A. Jenkins self mutilated his right side of face ending in 29 stitches summer of 2012.
2. Nikko A. Jenkins self mutilated his right side of face ending in 11 stitches total of 40 stitches on face. Then put on suicide watch only after the last event of January of 2013. Which is the reason for our Petition for Immediate Emergency Removal from Tecumseh State Corrections 23 hour confinement since 2007, to another facility to receive proper mental health needs.

Specific Behaviors:

1. Several suicide attempts.
 - a. No Psychiatric Medical Help from the Tecumseh Medical Staff.
 - b. No Medications to treat his disorders of schizophrenia, Bi-Polar Disorders, Post Traumatic Stress Disorder. No mental therapy sessions are being provided by Tecumseh Medical Staff.
 - c. Tecumseh continues to NEGLECT his mental health needs for his needs are deteriorating daily in 23 hour confinement.
 - d. His life is in Immediate DANGER by the Tecumseh State Corrections and the Medical Staff.
 - e. Nebraska Sate Parole Board denied him parole due to his mental medical status needs in September, 2012.
 - f. Release date is July 30, 2013 and needs mental medical treatment.

g. Judge Gary Randall acknowledges Nikko A. Jenkins needs due to mental illness in final court order. See attached final order Docket Number 183 No. 218, Case ID Cr 10 9075400 in the Douglas County Nebraska, July 11, 2011.

STATES OF NEBRASKA,)
 County of JOHNSON.) DATED: MARCH 8, 2013.

Notary Signature
 Notary
Shirley E. Remington



Notice: this correspondence was mailed from an institution operated by the Nebraska Department of Corrections. Its contents are unendorsed.
Lincoln, NE 68542-2500

OMAHA, NE 68103

24 APR 2013 PM 2 L



(012 Privileged Correspondence)

Nancy Jones
County Attorney

300 Hall of Justice 1701 Farnam Street
Omaha NE 68103 (08183)

4 Legal documents mailed
under OIA privileged
Correspondence Apr 17 2013

FOREVER
4 Legal documents mailed
under OIA privileged
Correspondence Apr 17 2013

Hospitalization Emergency please Help me!

DEPARTMENT OF CORRECTIONAL SERVICES
GRIEVANCE RESOLUTION FORM
UNIT STAFF

2013-1870

Robert P Houston (NDCS)

Director

TSCI B7 Smu

IKK A

59478

Officer Initial

Number

Facility/Housing Unit

PART A: Inmate Request/Concern.
59478 of (TSCIs) Smu unit B7 Isolations Come To
tion In A privileged Grievance For Emergency Removal
psychiatric Hospitalization under The mental
Article 9 (NE) Status #71-908 & #71-956 In A now
he director of (NDCS) within (TSCI) Facility I Am
psychologically & Emotionally AS my psychosis state
being treated In which IS directly Inducing The
my 8th Amendment of The Constitution IS Being
Man Rights Articles 5 & 7 Factually (TSCI) IS Also
Law chapter 83 Article 3 Statu # 83-356 By Allow ing
ations of me
Signature

2013 Resulting In Four Facial Wounds & 40 Stitches.

Response and Reason(s) for Decision Reached.

FEB 28 2013

The first thing I noticed
 when I stepped out
 of the car was the
 smell of the sea
 and the sound of
 the waves crashing
 against the rocks.
 It was a beautiful
 sight and I felt
 like I had found
 a new world.
 The water was so
 clear and blue
 that I could see
 the bottom of the
 sea. There were
 many fish and
 other sea creatures
 swimming around.
 I was in luck
 because I had
 brought my own
 fishing gear. I
 had a fishing rod
 and some bait.
 I was ready to
 go. I walked
 down to the beach
 and set up my
 fishing gear. I
 was so excited
 that I didn't
 even notice the
 sun was starting
 to set. I was
 so focused on
 my fishing that
 I didn't realize
 how late it was.
 I had been
 fishing for
 hours and I
 hadn't caught
 anything. I was
 getting frustrated.
 I had heard that
 this was a great
 spot for fishing.
 I had brought
 all the right
 gear and I was
 here. But I
 wasn't getting
 anything. I was
 starting to
 get angry.
 I had been
 fishing for
 hours and I
 hadn't caught
 anything. I was
 getting frustrated.
 I had heard that
 this was a great
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 I had brought
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 gear and I was
 here. But I
 wasn't getting
 anything. I was
 starting to
 get angry.

Notice: this correspondence was seized from an institution operated by the Nebraska Department of Corrections. Its contents are unsecured. Inmate Name: Miss Nissa Jones Inmate # 54478 PO Box 900 Lincoln, NE 68501-0900

LINCOLN NE 685

05 DEC 2012 PM 2 T

Happy Holidays

USA

USPS



FOREVER

FIRST-CLASS

USA

USA

USPS

USA

2 Legal documents To
douglas county prosecutor
NISSA Jones mailed on
December 4th 2012
.012 privileged mail!

.012 Privileged mail!

Nissa Jones

District Attorney
Douglas County

300 Hall of Justice 1707 Farnam Street

Omaha NE 68183

2 Legal document To
douglas County prosecutor
NISSA Jones mailed on
December 4th 2012
.012 Privileged mail!

March 21st
no legal litigation
for 13 months

judicial officer presiding over
submits a motion of Habitual Criminal Status

the first time I was imprisoned at 16 years old
for number 15

only heard only 7 to 2 years in total
I was charged with placed me under the long

guidelines for being eligible for Habitual
Criminal Filing in for Bully Tactics & manipulation

15
disposal of Semtex
the first time I was charged with placed me under the long

only heard only 7 to 2 years in total
I was charged with placed me under the long

guidelines for being eligible for Habitual
Criminal Filing in for Bully Tactics & manipulation

the court to rule in for favor the lied words
of the defendant

the Nebraska Statute must
be clearly stated

in the 2nd degree
for 2 to 7 years in
clearly stated

the Nebraska Statute must
be clearly stated

1880
Fodor's Minimalism which has been identified by Chomsky as
A more likely way to predict their anatomy over the previous Chemically
defined their Neurological Characteristics of Excitatory Inhibitory
All Natural Testosterone Dominant of growth of hormone level by the
most to feel of mental Basis to determine fully & follow by finding a com-
pound of gamma amino acid benzoic acid in battle spirit which is fundamental
in the chemical basis of the formation of human anatomy of testicles the brain
has been shown to be the Science of all phases of life Superior species Chemistry
but also Biology of Botany programming physics & wild of fields & the with many
and degree may physical Strength of All these people to the new in a

Corticosteroid (C₂₁H₃₀O₄) skeletal effluvia metabolism
steroid

Cortisone (C₂₁H₂₈O₅) Hydrocortisone (C₂₁H₂₈O₅) (C₂₁H₂₆O₅)
steroid

Hydrofluoride (reduced silicate) Hydrogen fluoride
(H₂F₂) (H₄F₄) (H₂F₂) or (HF) (SiO₂n H₂O)
(Silicate derived from silica or silica is also a water source)

Telomere (short specialized structures consisting of DNA molecules that form the terminal sections of eukaryotic chromosome)

Telomerase (enzyme found in all eukaryotes that protects the ends of chromosomes from being shortened by the action of telomerase

cell (glutathione) with in vivo and ex vivo of various nerves
(Adrenaline) (C₉H₉NO₃) (Amino acid)

Use of drugs when containing cobalt in the hemoglobin
oppor to titanium in blood vessels strong permanent magnets

JSC1

B-4

NSD

JENKINS NIKKO A #59478
2013-1870

NEBRASKA DEPARTMENT OF CORRECTIONAL SERVICES
GRIEVANCE FORM
Step Two
Central Office Appeal
RESPONSE AND REASONS FOR DECISION REACHED

Inmate Name: JENKINS NIKKO A
Inmate Number: 59478
Date Received: 3/1/2013
Grievance Number: 2013-1870
Subject: Mental Health
Response:

You contend you are in need of immediate admission to a psychiatric hospital because of your rapidly deteriorating physical, psychological and emotional state. Your concerns have been forwarded to the institution.

3-11-13 J.K. Hopkins for
Date Director

3
 The new appears in
 the report of the judicial Commission
 submitted to the Board of Education
 on July 1st 1911 and the transcript
 of the proceedings of the Board
 of Education for the year 1910-11
 shows that the case was on the
 agenda of the Board of Education
 on April 3rd 1911 and that the
 Board of Education on that date
 adopted a resolution to refer the
 case to the judicial Commission
 for their report. The Commission
 reported to the Board of Education
 on July 1st 1911 and the Board
 of Education on that date adopted
 a resolution to refer the case to
 the judicial Commission for their
 report. The Commission reported to
 the Board of Education on July 1st
 1911 and the Board of Education
 on that date adopted a resolution
 to refer the case to the judicial
 Commission for their report. The
 Commission reported to the Board
 of Education on July 1st 1911 and
 the Board of Education on that date
 adopted a resolution to refer the
 case to the judicial Commission for
 their report. The Commission
 reported to the Board of Education
 on July 1st 1911 and the Board of
 Education on that date adopted a
 resolution to refer the case to the
 judicial Commission for their report.

From: Wayne, Larry
Sent: Monday, May 06, 2013 1:26 PM
To: Wellage, Mark
Subject: RE: Hurlbert

Mark: I'd be interested in learning about what his discharge plan might look like and how the issues may impact same.
Thanks.

Larry Wayne
Deputy Director
Programs and Community Services
Nebraska Department of Correctional Services
P.O. Box 94661
Lincoln, NE 68532-4661
Office: 402 479-5721

From: Wellage, Mark
Sent: Monday, May 06, 2013 12:12 PM
To: Wayne, Larry
Subject: RE: Hurlbert

the eval was done and submitted... I can follow up on other issues if you would like.... but I thought the eval was the biggest issue.

Mark

Mark Wellage, Ph.D.
Assistant Behavioral Health Administrator - Mental Health
Nebraska Department Of Correctional Services
Health Services - Behavioral Health Section
PO Box 94661
Lincoln, NE 68509-4661
Phone (402) 326-3781
mark.wellage@nebraska.gov



Please consider the environment before printing this email

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From: Wayne, Larry
Sent: Friday, May 03, 2013 3:38 PM
To: Wellage, Mark
Subject: Hurlbert

Mark: we discussed this inmate who I believe has a November TRD and is in seg. I believe you were going to have someone assess him for discharge planning. I remember his name came up in the meeting we had with the ombudsman's office on Nikko Jenkins earlier. Please bring me up to speed on this inmate's status. Thanks.

Larry Wayne
Deputy Director
Programs and Community Services
Nebraska Department of Correctional Services
P.O. Box 94861
Lincoln, NE 68532-4661
Office: 402 479-5721

From: Wayne, Larry
Sent: Thursday, May 30, 2013 8:05 AM
To: Moreland, Jerall
Cc: Sabatka-Rine, Diane
Subject: Re: TSCI Inmate Nikko Jenkins #59478

Jerall, I'm satisfied Mr. Jenkins' situation is being handled appropriately given the Information shared with us by Warden Sabatka-Rine.

Sent from my Verizon Wireless 4G LTE DROID

Jerall Moreland <jmoreland@leg.ne.gov> wrote:

Larry,

Today, I found out that Nikko Jenkins has continued to be locked down for 23 hours a day, even though he has been in the transition unit. I spoke to Warden Sabatka-Rine and she was not aware of any special provisions that Nikko should be on. I must admit, I spoke with UM Edison a couple of weeks ago and was told that NSP was looking at ways that they could allow Mr. Jenkins out of his cell to assist with his transition, understanding the classes would not start until June.

Following up on this matter today, I find no such actions have occurred. I am interested in why not? As in previous email communications, discussions concerning the need for interaction with staff and inmates in a lower restrictive manner has been paramount. Therefore, I wonder how the lack of this ability assists with the transition program of a case such as Nikko. Mr. Nikko is suppose to start classes the second week of June, Is there something that can be done to help facilitate more out of cell time for Nikko prior to the start of classes.

Call me if you would like or let me know if you have questions. Thanks!

Jerall

On Wed, Apr 24, 2013 at 3:35 PM, Jerall Moreland <jmoreland@leg.ne.gov> wrote:
Larry: Thanks for the update on Nikko Jenkins. The incorporation of a lower restrictive environment will hopefully assist with the step down approach needed, before any upcoming release into society.

On Wed, Apr 24, 2013 at 1:13 PM, Wayne, Larry <Larry.Wayne@nebraska.gov> wrote:

From: Wayne, Larry
Sent: Thursday, May 30, 2013 8:00 AM
To: Sabatka-Rine, Diane
Subject: Re: TSCI Inmate Nikko Jenkins #59478
Attachments: image001.jpg

Thanks Diane, most helpful-

Sent from my Verizon Wireless 4G LTE DROID

"Sabatka-Rine, Diane" <Diane.Sabatka-Rine@nebraska.gov> wrote:

Larry:

Outside of the Transition Confinement classification, there isn't any "transition opportunities" that could have been provided to Mr. Jenkins. Housing Unit #4 isn't a transition unit - it is a segregation unit where the Transition Confinement program is located for inmates classified to this status. I don't know what Unit Manager Edison may have said to lead Mr. Moreland to believe that we were looking at ways that would allow Mr. Jenkins out of his cell before he started the Transition Confinement program, but no such accommodations were presented or authorized by me.

Outside of the current Transition Confinement program, current segregation operations do not include additional out of cell time. Attached is the e-mail I sent to Mr. Moreland earlier today explaining when the next program would begin and the "agenda" for the program progression. The next Transition Confinement group is scheduled to begin June 10th. Mr. Moreland called me yesterday and was very upset to learn that Mr. Jenkins was still on Administrative Confinement. I explained to him that Mental Health and the Social Worker were continuing to work with Mr. Jenkins but that did little to address his concern.

Let me know if you have other questions or need additional information.

From: Wayne, Larry
Sent: Wednesday, May 29, 2013 1:17 PM
To: Sabatka-Rine, Diane
Cc: Hopkins, Frank
Subject: FW: FW: TSCI Inmate Nikko Jenkins #59478

Diane: please advise. Thanks.

Larry Wayne
Deputy Director
Programs and Community Services
Nebraska Department of Correctional Services
P.O. Box 94661
Lincoln, NE 68532-4661
Office: 402 479-5721

From: Jerall Moreland [<mailto:jmoreland@leg.ne.gov>]
Sent: Tuesday, May 28, 2013 3:30 PM
To: Wayne, Larry
Subject: Re: FW: TSCI Inmate Nikko Jenkins #59478

Larry,

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Call me if you would like or let me know if you have questions. Thanks!

Jerall

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Larry: Thanks for the update on Nikko Jenkins. The incorporation of a lower restrictive environment will hopefully assist with the step down approach needed, before any upcoming release into society.

On Wed, Apr 24, 2013 at 1:13 PM, Wayne, Larry <Larry.Wayne@nebraska.gov> wrote:
Jerall: here's the latest we have on Nikko Jenkins' status.

Larry Wayne
Deputy Director
Programs and Community Services
Nebraska Department of Correctional Services
P.O. Box 94661
Lincoln, NE 68532-4661
Office: [402-479-5721](tel:402-479-5721)

From: Wayne, Larry
Sent: Wednesday, April 24, 2013 1:06 PM
To: Sabatka-Rine, Diane
Subject: RE: TSCI Inmate Nikko Jenkins #59478

Thanks Diane-

Larry Wayne
Deputy Director
Programs and Community Services
Nebraska Department of Correctional Services
P.O. Box 94681
Lincoln, NE 68532-4661
Office: 402 479-5721

From: Sabatka-Rine, Diane
Sent: Wednesday, April 24, 2013 11:26 AM
To: Wayne, Larry
Subject: RE: TSCI Inmate Nikko Jenkins #59478

Larry:

It turns out that I was misinformed on when the next Transition Confinement group would begin. On April 11th, I indicated that it would be a "few more weeks" I learned today that there are 5 weeks left in the program for the current group - which means the next class will not begin until the first part of June (at the earliest). Given this information, I have asked Deputy Warden to ensure that Mr. Jenkins is moved from the Control Unit to Housing Unit #4 no later than April 30th as part of his "transition" plan.

Please let me know if you have other questions or need additional information. Thanks!

From: Wayne, Larry
Sent: Wednesday, April 24, 2013 11:08 AM
To: Moreland, Jerall
Cc: Houston, Bob; Hopkins, Frank; Sabatka-Rine, Diane; Foster, Kathy
Subject: FW: TSCI Inmate Nikko Jenkins #59478

Jerall: I'm sorry our opinions and expectations don't match up. We agreed we want the same things for Mr. Jenkins. I've attempted to call you several times (again today) concerning the dispute about how fast those things should occur. I know you've attempted to call me when I was away from my desk as well. This seems to be a reoccurring theme between our agencies. I assure you we'd like to go faster also, but often the problem of having too many inmates coupled with not enough time to make things happen quickly as we'd like is frustrating for me as well. As I indicated in my earlier correspondence with you Mr. Jenkins has done well and is going to the next bed in Transition Confinement. This could be today or tomorrow or as quickly we can get to it. I also expect Kathy Foster will continue meeting with him for discharge planning as needed.

Please feel free to call me if you wish.

Larry Wayne
Deputy Director
Programs and Community Services
Nebraska Department of Correctional Services
P.O. Box 94661
Lincoln, NE 68532-4661
Office: 402 479-5721

From: Wayne, Larry
Sent: Tuesday, April 23, 2013 2:41 PM
To: Wayne, Larry
Subject: FW: TSCI Inmate Nikko Jenkins #59478

Larry Wayne
Deputy Director
Programs and Community Services
Nebraska Department of Correctional Services
P.O. Box 94661
Lincoln, NE 68532-4661
Office: 402 479-5721

From: Jerall Moreland [<mailto:jmoreland@leg.ne.gov>]
Sent: Tuesday, April 23, 2013 2:39 PM
To: Wayne, Larry
Cc: Lux, Marshall; Houston, Bob; Hopkins, Frank; Sabatka-Rlne, Diane; White, Cameron; Weilage, Mark; Foster, Kathy; Davis III, James; Schmelts, Sean; Cynthia Grandberry
Subject: Re: TSCI Inmate Nikko Jenkins #59478

Larry, I have added a couple of communications that the Ombudsman's Office has had concerning Mr. Jenkins. The response from you in this matter, in our opinion (James Davis, Sean Schmeits and I) does not capture the meeting we had on March 20, 2013. This is unfortunate. As you know, we discussed time lines and action items to assure Mr. Jenkins moved through the system. One of the reasons for the meeting, in any stretch of the imagination, was to make sure issues such as institutional resources, time and any other reasons outside of Mr. Jenkins being uncooperative wouldn't negatively effect the transitional plan. Therefore, It appears the only thing left to discuss with this matter is that the Department recognize the need to follow the transition plan discussed at the meeting.

Jerall Moreland, Assistant Ombudsman
Ombudsman's Office
402-471-2035
jmoreland@leg.gov.ne



On Tue, Apr 23, 2013 at 2:11 PM, Wayne, Larry <Larry.Wayne@nebraska.gov> wrote:

Jerall: I believe we did discuss timeframes in general given his July 30 release, but we did not state he'd be in any one place at any particular time. I believe Dr. Wellage has, or will be seeing Mr. Jenkins soon. I also know Ms. Foster has seen him. Finally, I did visit with Warden Sabatka-Rine and who indicated Mr. Jenkins has been doing well and was being considered for further classification review with movement as appropriate. I specified to her this should occur in line with institutional resources for time and space along with trying to situate Mr. Jenkins to have the best chance of success now and after his upcoming release. Let me know if you wish to discuss further.

Larry Wayne

Deputy Director

Programs and Community Services

Nebraska Department of Correctional Services

P.O. Box 94661

Lincoln, NE 68532-4661

Office: 402 479-5721

From: Jerall Moreland [<mailto:jmoreland@leg.ne.gov>]
Sent: Tuesday, April 23, 2013 12:43 PM
To: Wayne, Larry
Cc: Lux, Marshall; Houston, Bob
Subject: Re: TSCI Inmate Nikko Jenkins #59478

Larry, I just found out that you attempted to contact me on several occasions yesterday April 22, 2013 concerning Mr. Nikko Jenkins. Thank you, as I was not aware of your attempt prior to the e-mail. I look forward to discussing the points concerning Mr. Jenkins matter with you further. Jerall

On Tue, Apr 23, 2013 at 10:16 AM, Jerall Moreland <jmoreland@leg.ne.gov> wrote:

Larry,

I received a update from Warden Sabatka-Rine on Mr. Nikko Jenkins approximately 10 days ago. Essentially, the report I received from Warden Sabatka-Rine is that Mr. Jenkins has been appropriate while housed under AC. As you know, the Ombudsman's Office and DCS representatives met on March 20, 2013, to discuss an appropriate transition plan for Mr. Jenkins, who is scheduled to be discharged in June of 2013.

During the meeting we were told that after 30 more days on AC, Mr. Jenkins would transition to the NSP transition unit barring any compelling reasons. It has been 30 days since the meeting and still Mr. Jenkins has not been transferred as agreed upon. We would like to see the Department carry out the actions that the Department committed to put in place.

Additionally, during the meeting, we were told that Mr. Jenkins would be seen by Mental Health every 15 days. Again, it is my understanding that these actions were not carried out as well. However, I can share that Kathy Foster the DCS Social Worker has carried out all of her actionable items and I commend her for that.

I have attempted to contact you concerning this issue through messages left at your office and no response. Additionally, Warden Sabatka-Rine was to speak to you concerning the issue and get back to me. At this time, I would ask that you respond to the actions not carried out to date, and let me know if the Department intends to meet the objectives discussed for Mr. Jenkins transition plan?

Thanks, Jerall

On Fri, Mar 15, 2013 at 10:48 AM, Jerall Moreland <jmoreland@leg.ne.gov> wrote:

Larry,

Thank you for moving forward with the transfer consideration for Mr. Nikko Jenkins. I hope the action proves to be positive, but, realize we are still dealing with a challenging situation. Thanks for the comments and review on the placement of Mr. Jenkins and the

Ombudsman's Office looks forward to further discussion on strategies pertaining to his discharge plan.

As you know, recently, Director Houston and I communicated on several issues surrounding Jenkins. It is the Ombudsman's position that Director Houston has correctly identified one of the concerns we have with Jenkins cased, which in our opinion, is Mr. Jenkins being released directly into the community after spending such a long duration in a segregated status at a high security unit, without a comprehensive discharge plan.

Essentially, we believe a system to facilitate the return to lower levels of custody, to those housed in long-term segregation is important. Basically, it seems a person serving a sentence who would otherwise be released directly to the community from long-term segregated housing, should be placed in a less restrictive setting for the final months of confinement. Except in compelling circumstances. Our expectations reviewed for progress.

In this case, it seems a question needing to be addressed is if there is a compelling reason to not house Mr. Jenkins in a least restrictive setting, as he is closer to his release date. Maybe there is, but where is that setting at (transition unit, minimum facility, medium facility, Community Corrections, etc)?

In closing, I bring these elements to your attention for your thoughts. As you recently cancelled the meeting with Kathy Foster, Mark Weilage, you and I, that was scheduled for next Wednesday, I wanted to bring this to your attention. I will await to hear from you concerning rescheduling?

Jerall

Jerall Moreland, Assistant Ombudsman
Ombudsman's Office
402-471-2035
jmoreland@leg.gov.ne

From: Wayne, Larry
Sent: Saturday, June 15, 2013 7:10 PM
To: Houston, Bob
Subject: Re: Attached is a copy of the Memo re: Policy Development for Inmates on AC approaching release

Bob, okay will do. Thanks.

Sent from my Verizon Wireless 4G LTE DROID

"Houston, Bob" <Bob.Houston@nebraska.gov> wrote:

Larry,

Thanks for the overview of establishing re entry principles and practices for those moving directly to the Nebraska community from segregation. Mental Health involvement can be decided on an individual basis with a referral as needed. Unit Management and Parole need to be involved as well as social work.

It seems that a draft administrative regulation, with a readiness and a mental health referral form as attachments, would serve as a good guideline for the next few months.

We are further developing the Levels Program to include congregate programming, dayroom and exercise through the AC Committee. As we know, the transition to the community is a bit different than re entry to general population.

Please bring this topic up for a brief discussion Monday morning. We can plan an expanded discussion with the needed departments/perspectives included.

Thanks,

Bob

Sent from my Samsung Galaxy Tab 10.1

"Young, Konda" <Konda.Young@nebraska.gov> wrote:

Konda G. Young
Programs and Community Services
Phone: (402) 479-5753
Fax: (402) 479-5623

konda.young@nebraska.gov

From: Wayne, Larry
Sent: Tuesday, September 03, 2013 2:38 PM
To: Houston, Bob
Subject: FW: Per your request
Attachments: AC - Bullet Points - 06-12-13.docx

Bob: these are the meeting minutes from June 12 of this year which I discussed with you Friday concerning Nikko Jenkins. Note he is on the first page near the top.

From: Young, Konda
Sent: Tuesday, September 03, 2013 1:37 PM
To: Wayne, Larry
Subject: Per your request

Konda G. Young, Interstate Compact Coordinator
Nebraska Department of Corrections
Programs and Community Services
P.O. Box 94661
Lincoln, NE 68509-4661

Office: (402) 479-5753
Fax: (402) 479-5623

MEMORANDUM

TO: Robert P. Houston, Director

DATE: June 12, 2013

RE: Policy Development for Inmates on Administrative Confinement Approaching Release

FROM: Larry Wayne, Deputy Director

In reviewing overall Administrative Confinement policy and procedure the issue of inmates approaching release from prison while on Administrative Confinement was discussed at a meeting on June 10, 2013, between Kathy Foster, Social Work Director, Dr. Mark Wellage, Assistant Administrator for Behavioral Health, Mental Health, Teresa Bittenger, Parole Supervisor for Reentry, and Larry Wayne. By way of background, we discussed three current inmates and the challenges they pose as they are somewhat instructive for the review and addressing of overall concerns in this area:

Nikko Jenkins, #59478: Mr. Jenkins has served much of the last few years on Administrative Confinement. More recently, external stakeholders have identified Jenkins upcoming July 30th mandatory discharge date as a concern. To address this, Jenkins (per his own request) was transferred from TSCI SMU to the Penitentiary Control Unit earlier this year. He appeared to be demonstrating progress in his new environment and was subsequently placed on the Transition Confinement program. After this, Jenkins again reverted to his more manipulative behavior. This included writing the Douglas County Attorney to plead his case for Regional Center Commitment and declining medication from Psychiatrist Dr. Jack. Ultimately, Mr. Jenkins cannot seem to discontinue his thinking that he will have an easier life if referred and/or committed to the Regional Center. His mother has indicated she will let him live with her, but Mr. Jenkins insists he has a number of women who want him to live with them. Ms. Foster says the best we can do as he approaches his July 30th release is to provide him with a list of people he can seek out should he decide he wants assistance. Referral for programming assistance upon release is not prudent given Mr. Jenkins current attitude of resistance.

_____ is another inmate approaching mandatory discharge in November of 2013. _____ is presently confined at the TSCI SMU. He has engaged in a number of inappropriate behaviors resulting in a longer term placement at Administrative Confinement while generally being disagreeable and uncooperative with staff attempting to work with him. Dr. Wellage indicated most recently _____ was recommended for placement in general population with a time of transition at Work Release prior to his mandatory discharge. Dr. Wellage further indicated _____ was noncompliant with all mental health interventions, but eventually agreed to assessment from clinical staff. This revealed a personality disorder with substance abuse, but no significant mental health issues. In short _____ is an angry, noncompliant individual who continues to decline or refuse psychologists visits as offered. He claims he has family in Iowa who will take him upon his November discharge. We will attempt to expedite _____ transfer to community corrections to assist him with transition in this area.

_____ has been housed in the Nebraska State Penitentiary Control Unit since his admission and lost all good time due to repeated acting out behavior. His 2023 tentative release date removes immediacy from discharge planning, but still makes him worthy of consideration in reviewing overall Administrative Confinement procedures. _____ is resistant to recommended treatment for anger management and highly aversive to working with staff. Dr. Weilage has recommended with Warden Peart's concurrence that _____ be transferred to Lincoln Correctional Centers Transition Confinement Program. It is hoped that we will be better able to assess and evaluate _____ mental status for determination of further programming be it mental health unit, general population or just simply working on his level of trust and cooperation with staff.

Discussion of these three inmates is believed instructive in guiding agency policy and practice for inmates on Administrative Confinement. The consensus opinion from Dr. Weilage and Social Work Director Kathy Foster are that ***priority must be given in focusing resources on general population or Administrative Confinement inmates who are 1) mentally ill, 2) sex offenders or 3) violent offenders.*** The limited resources available through clinical mental health staff and social workers underscore the legal mandate to treat these inmates with highest priority.

If no mental illness is present or diagnosed, then preparing an inmate anyway possible for parole is the next best alternative. This involves continuation of our efforts to fully implement the Transformation Project, Crisis Intervention and Conflict Management and Cognitive Restructuring (i.e. the 7 Habits of Highly Effective People) along with the levels program and building in additional privileges while reviewing the length of time an inmate spends on AC and the placement options for transitioning off of AC. Placement of such inmates on parole as appropriate will continue to provide opportunity for referring them to resources and direct services. This is not as effective after inmates have discharged as attitudinal and behavior problems leading to their placement remain counterproductive after release.

Recommended Policy and Practice Changes

As we have stated throughout evidenced based case management and discharge planning should be employed. Readiness factors to consider for AC inmates might include:

- What behaviors caused them to come to segregation?
- History of behavior in prior segregation placements?
- How long have they been in segregation?
- How much time before release via parole or mandatory discharge?
- How are they behaving – misconduct reports?
- Overall citizenship on AC; how do they get along with staff and other inmates? Are they compliant?
- Threat posed upon return to GP; are they STG members who will have difficulty in GP?

- Program compliance; are they making a good faith effort in Transformation Project/Cognitive Restructuring?
- How are they doing with the levels program associated with stable behavior and graduated release? This might include showering without restraints, feeding assignments, eating in groups, opportunity for more movement, exercising in groups and participation in small groups for staff facilitated Transformation Project modules.

Inmates who are successfully engaged in these areas will likely present greater potential for moving to less restrictive environments. Current initiatives such as Conflict Resolution and Crisis Intervention along with the Transformation Project and 7 Habits of Highly Effective People being provided by non-clinical staff will go a long way toward prevention as a front end alternative to segregation and intervention after inmates are released from AC. Reentry to general population should be approached along the same lines as transition to Community Corrections (using the readiness index) or onto parole utilizing the parole risk factors. As an agency, if we are able to equip line staff with these tools for bringing about effective behavior we will go a long way toward approaching inmates on administrative confinement in a proactive versus reactive fashion.

From: Wayne, Larry
Sent: Monday, September 09, 2013 3:11 PM
To: Lindgren, Sharon; White, Cameron; Weilage, Mark; Foster, Kathy
Cc: Green, George
Subject: RE: Jenkins Meeting

I keep handwritten notes from this meeting for myself but only of the "to do" variety and didn't keep them. I later convened a follow up meeting with Dr. Weilage, Kathy Foster and Teresa Bittinger to discuss the issue of preparing inmates in segregation for discharge. This was related to our meeting at Mahoney State Park to discuss Admin. Confinement Programming. I have these minutes and will send this to George.

From: Lindgren, Sharon
Sent: Monday, September 09, 2013 2:25 PM
To: White, Cameron; Wayne, Larry; Weilage, Mark; Foster, Kathy
Cc: Green, George
Subject: Jenkins Meeting

On March 20, 2013, I attended a meeting at which Nikko Jenkins' discharge planning was discussed with the Ombudsman's Office. My memory is that the Ombudsman's Office was pushing to get Mr. Jenkins out of segregation and potentially into community custody before his release date. There was discussion about his living with his mother and sister after his release and Kathy was to do some follow-up. Is this accurate? Do any of you have minutes and/or notes from this meeting?

Sharon M. Lindgren
Associate Legal Counsel
Nebraska Department of Correctional Services
P. O. Box 94661
Lincoln, Nebraska 68509-4551
(402) 479-5952
sharon.lindgren@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

Fax: (402) 742-2349
Kyle.Poppert@nebraska.gov

Change is inevitable, growth is optional.



**DCS Executive Staff
Meeting Notes
March 18, 2014
8:00 am
ECTC**

Present: Director Mike Kenney, Robin Spindler, Dr. Randy Kohl, Betty Jo Williams, John McGovern, Jeff Beaty, Frank X. Hopkins, Larry Wayne, Dawn-Renee Smith and Traci Hanson.

Officer of the Day – Kyle Poppert, March 11 – March 17, 2014. The OD report was emailed out. Next OD is Dawn-Renee Smith, March 18 – 24, 2014, and Brad Hansen, March 25 – 31, 2014.

Positive Things – Robin Spindler

Deputy Director Spindler handed out a copy of the March NDCS Monthly Update. Any additions, please forward to Deputy Director Spindler via e-mail.

Director Kenney

- Director Kenney thanked everyone for all of their help and kind words of encouragement during his confirmation hearing.
- We will be calling out all of the Senators and getting their preference on whether their calls from inmates are monitored/recorded or confidential. Once we are done with all of the calls, we will get this set up with Jeff Peterson and Holly Rohde.
- There will be 17 new Senators next year.
- Assistant Warden Tim Slemek at NCCW will be retiring next Friday.

Calendars – Director Kenney

- ~~Wednesday, March 19, 2014, will be going to the Warden's meeting at NCFY.~~
 - ~~Thursday, March 20, 2014, have a meeting at the Governor's office at 7:45am and then a budget meeting at 10am in the ECTC.~~
 - ~~Friday, March 21, 2014, have the UNO Ceremony in Omaha. Robin, Larry, Dawn-Renee will also be attending.~~
- I wouldn't put this in...I would just say they were reviewed by all.

Dr. Randy Kohl

- John Wilson, new chief operating officer for Health Services, is in training.
- ~~Monday, March 24, 2014, have a deposition for~~

specific inmates should be mentioned, especially for medical concerns. Much of what is discussed won't actually be noted. You may just want to say something like, "General updates for the area were provided."

Betty Jo Williams (for George Green)

- George Green is out until Monday, March 24, 2014.
- Working on inmate grievances that have come in.
- Legal has an up-coming meeting with Mental Health.

Dawn-Renee Smith

- LB999 – Amended to provide a 200 bed Mental Health facility run by HHS and housed on the Hastings Campus.

