

Exh P

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Hanson, Doug

() **From:** Houston, Bob
Sent: Monday, May 04, 2009 10:59 AM
To: Hanson, Doug
Subject: FW: Questions

Doug,

Pls note. I will call you.

From: Bell, Robert <Robert.Bell@nebraska.gov>
Sent: Monday, May 04, 2009 10:12 AM
To: Houston, Bob <Bob.Houston@nebraska.gov>
Cc: Nemec, Connie <Connie.Nemec@nebraska.gov>
Subject: Questions

Bob: This is a follow up to the question I asked you at the Community Corrections Council meeting Friday. I am interested in realistic cost estimates related to prison construction. I know that you have a 'footprint' available at TSCI, and I believe you may another footprint available at another facility which escapes me at the moment. I also think that you have said in the past that your need is at the lower custody levels, so I would like an estimate of a new minimum/medium facility. I will leave the bed number up what you think is reasonable. I will also need the cost of running such a facility for a year (including personnel). I need the 2009 costs, so please take into account inflation if you can. I

() understand that this would be just your best estimate/guess, so don't over work your staff trying to get the data! To recap:

1. TSCI addition construction costs, # of new beds, increase in annual operating costs.
2. Other facility construction costs, # of new beds, increase in annual operating costs.
3. Medium/minimum construction costs, # of new beds, annual operating costs
4. If I forgot something obvious, insert here!

ANOTHER QUESTION: How many inmates, during the last twelve months, entered into DCS with less than a year to serve?

Thanks for your help. Call with any questions. Robert

Robert M. Bell
Governor's Policy Research Office
(402) 471-2853
robert.bell@nebraska.gov

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STATE OF NEBRASKA

DEPARTMENT OF CORRECTIONAL SERVICES
Robert P. Houston
Director



Dave Heineman
Governor

MEMORANDUM

DATE: May 7, 2009

TO: Robert Bell, GPRO

FROM: Robert P. Houston, Director *RPH*

SUBJECT: Housing and New Facility Construction
NDCS Inmates serving 366 days or less when received

Pursuant to our discussion, I am providing you with some very "ballpark" cost information. The following information is partly based on the 2006 Strategic Capital Facilities Plan, as prepared by Carter Goble Lee, as well as the actual project cost for TSCI.

1. **256 Bed Housing Unit Addition (Maximum Security) - TSCI**

(a) Project cost for a new 256-bed housing unit on the existing TSCI footprint was estimated at \$23,296,000 (2006 data). Today's project cost estimate, adjusted for inflation would be \$25.9 million, as follows:

Year	Req. Cost	Increase	Ending Cost
2006	\$23,296,000	3.9%	\$24,204,600
2007	\$24,204,600	2.7%	\$24,858,200
2008	\$24,858,200	4.3%	\$25,927,100
2009	\$25,927,200		

Constructing a new housing unit within the secure perimeter of TSCI will result in additional construction costs related to security and access issues for the contractor, sub-contractors, and suppliers. As such, an "8% security conditions" factor is also applied to the TSCI project. Increasing the \$25,927,200 estimate by eight percent (8%) results in a total estimated project cost of **\$28.0 million**.

(b) Number of new beds = 256 beds

(c) Increase in annual operation cost = \$4,800,000 (65 FTE)
PSL: \$284,200 One-time costs: \$147,000

2. 250 Bed Housing Unit Addition (Minimum/Community Custody) – CCCL

Clearly, CCCL is the most cost efficient minimum/community custody facility to add inmate housing to. It would be very difficult to add housing at CCCO due to insufficient land area, utilities, and the need to close a public street. CCCL, on the other hand, has ample site size and utilities within a reasonable distance. The following cost estimate is based on providing a 250 bed housing unit increase to CCCL. Consideration for new food service facilities, heating plant, and other ancillary services are included in the square footage, however, industrial space (CSI) and a gymnasium is not included. Project cost is based on a construction cost of \$195 per square foot plus project soft costs of 30% for FFE, Security Equipment, Fees, Site Utilities, and Contingencies.

<u>Beds</u>	<u>Area</u> <u>Per Bed</u>	<u>Total Area</u>	<u>Project Cost</u> <u>per GSF</u>	<u>Project Cost</u>
250	250 GSF	62,500 GSF	\$255	\$15,937,500

- (a) Project Cost for a 250 bed housing unit expansion at CCCL is estimated at **\$15.9 Million.**
- (b) Number of New Beds = 250 Beds
- (c) Increase in annual operation cost = \$2,725,000 (34 FTE)
PSL: \$1,210,425 One-time Costs: \$90,000

3. New 900 Bed Multiple Custody Facility (Maximum/Medium) – Site Unknown

Our focus has changed from a medium-minimum facility to maximum-medium for two (2) reasons:

- 1. As community corrections efforts advance, our remaining inmates will be those serving longer sentences for violent offenses and with more serious criminal histories. We will want the flexibility to divide or disperse adult criminal partners and criminal threat group members amongst three facilities.
- 2. The Lincoln Correctional Center (LCC) was built as a medium-minimum facility in 1979. For the past two (2) decades it has been required to hold very volatile, young, maximum-security inmates. The facility is not designed for this population. Additionally, LCC's mission needs to change over the next decade to house our increasing special populations to include protective custody inmates, sex offenders, and the mentally ill.

The following is a preliminary project cost estimate to construct a 900 bed, multi-custody facility capable of housing maximum, medium, and minimum security inmates. Instead of using resource information from the 2006 Strategic Capital Facilities Plan, the following estimate is based on providing a facility similar to TSCI. As you know, TSCI was programmed and designed based on essentially this same criteria. As such, the most comparable cost model would be TSCI, adjusted for 900 beds using today's cost criteria. TSCI was originally funded in 1997 with an appropriation of \$73,946,763 for a design capacity of 960 beds. The following is my interpolation of what a similar facility would cost today:

- A. Project Cost per inmate bed in 1997: $\$73,946,763 / 960 \text{ beds}$
= \$77,028 per design bed
- B. Interpolated Project Cost for 900 beds in 1997: $900 \text{ beds} \times \$77,028 \text{ per bed}$
= \$69,325,200
- C. Today's Project Cost utilizing *Engineering News Record's "Building Cost Index History"* since 1997:

Year	Beginning Value	Annual Cost Increase	Ending Value
1997	\$69,325,200	5.027%	\$72,978,600
1998	72,978,600	0.803%	73,394,900
1999	73,394,900	1.917%	74,801,800
2000	74,801,800	2.402%	76,598,600
2001	76,598,600	0.989%	77,356,200
2002	77,356,200	1.371%	78,416,800
2003	78,416,800	1.932%	79,931,800
2004	79,931,800	7.880%	86,230,400
2005	86,230,400	5.547%	91,013,600
2006	91,013,600	3.900%	94,563,100
2007	94,563,100	2.655%	97,073,800
2008	97,073,800	4.593%	101,532,300
2009	\$101,532,300		

- D. Additional cost issues: The \$101.5 million estimate does not include cost factors for a higher proportion of segregation and maximum security beds compared to TSCI. For instance, this new facility may require a higher proportion of these types of beds. Additionally, the square footage per inmate (Area/Bed) for TSCI (383 sf/bed) is slightly below the cost matrix information provided in the Strategic Capital Facilities Plan of 400 square feet per bed. As such, a small 5% factor is included to account for these

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variances. Therefore, increasing \$101.5 Million by five percent (5%) results in a total estimated project cost of \$106.6

(a) The estimated project cost for a 900 bed, multi-custody facility is \$106.6 Million. The location for this facility is unknown, and therefore, site acquisition costs, major utility extensions, driveway/roadway costs, and other major infrastructure costs are not included in the estimated project cost.

(b) Number of new beds = 900 beds

(c) Annual operational cost =\$32,150,000 (511 FTE)
PSL: \$16,362,150 One Time Costs: \$1,426,000

To recap the estimated project cost from the above:

- | | |
|-----------------------------------------------------------|-----------|
| 1. 256 Bed Housing Unit Addition (Maximum Security)-TSCI | \$28.0 M |
| 2. 250 Bed Housing Unit Addition (Minimum/Community)-CCCL | \$15.9 M |
| 3. New 900 Bed Multiple Custody Facility-Site Unknown | \$106.6 M |

Once again, I want to reiterate facility and staffing costs are "ballpark" project cost estimates. In the event any project would move forward, a full program statement with architectural space plan is required.

You had inquired as to the number of inmates admitted to NDSC within the last year with less than a year to serve. As of May 3, 2009, 2422 inmates had been admitted within the previous twelve months. Of that number, 703 had less than 366 days to serve.

RPH/csn

Attachment: Robert Bell's May 4, 2009 email

CC: Robin Spindler
Kate Morris
Connie Nemecek
Layne Gissler
Larry Wayne
File

Talking Points
Bob Houston & Larry Bare
RE: NDCS, November 7, 2007
10:00 am

Blue Ribbon Panel

- Extremely helpful – thank you~
- What work has been done so far includes:
 - High School Guidance Counselors are visiting TSCI.
 - On-site job fair at TSCI.
 - Fliers to Universities and contacts with career placement officers.
 - Explored Sterling, Colorado efforts to hire in rural area – (Colorado DOC)
 - Cornhusker State Industries (CSI) will advertise on trucks.
 - Movie theatre advertisements are ongoing in Beatrice, Nebraska City and Auburn.
 - Workforce Development developed a video press release regarding TSCI employment and will send to Nebraska media outlets.
 - Business cards and pens as give a ways.
 - Radio commercials with personal testimonials.
- When Blue Ribbon Panel started, we had 70+ TSCI security vacancies; today, we have 27. 14 Unit Management vacancies currently exist at TSCI.
- When NSP became fully staffed, eligible candidates went to TSCI.
- Chris Peterson and I will meet with you on November 14, 2007, about common interests in Blue Ribbon ideas.

UNO Exit Survey by Center for Applied Psychological Services/Focus Group

- 1st level supervisor training.
- Teams of staff work on each recommendation.
- Internal promotion process changed for Pay Grade 13 (PG13) and above.
- Supervisor Promotion Board is more consistent and inclusive.
- Performance Evaluations are being done with greater skill.
- Team within a Team begins January 1, 2008.
- More management coverage in facilities on weekends and evenings.
- Field Training Officer recognition (FTO of The Year Award).
- Public Relations is key to hiring and retaining employees.
- Ms. Connie Nemecek named Public Information Officer (PIO) effective November 30, 2007; will add public relations features using existing resources as suggested by UNO.

Strategic Planning for Human Resources for 2009 – 2011 Budget

- Alignment of custody and unit supervisors (Rules & Regulations).
 - Caseworker is contract driven (5.83%) and left for Union proposals. →
 - Upgrades recommended by DCS:
 - Case managers PG 12>13
 - Unit Managers PG 13>14
 - Unit Administrators PG 14>15.
- State Personnel is studying these recommendations based on responsibilities for the positions.
- Currently, PG 9 Corporals often earn more per hour than Senior PG 12 Case Managers.

consider making SPT

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Strategic Planning for Institutions/Parole Ideas To Reduce Severe Overcrowding

- Keep short time commitments in county jail/work release (also noted below). *Shorten*
 - Challenge - an offender earns less good time in jail than in prison and cost. *pk: 2*
- Profiling of high-risk inmates. Sample being developed for high-risk inmate: good deterrent and excellent investigative tool.
- Parolees on house arrest. Parole Board states this would increase parolee candidates.
- Parole Violations
 - Add better structure to violation recommendations and decisions.
 - Develop and deliver training to parole officers within the next 6 months.
 - Rethink job description of parole officers.
- Minnesota tracks down walk-a-ways and parole absconders.
 - Added credibility by significantly decreasing escapes.

Strategic Planning with Probation.

- Concentrate on Non-violent offenders in prison – Probation as 1st option for judges.
- DCS Interest:
 - Probation/Community Corrections Council stays focused on lowering prison count.
- Alternatives to Prison – Process
 - Community Corrections Council (CCC) can discuss needed actions and implementation strategies to widen appropriately covered population.
 - Double size of Work Ethic Camp (WEC) as a Community Corrections, Probation and NDCS goal.
 - Alternative sanctions for inmates that have six (6) months or less to serve (434 in FY 2007). Huge positive impact at DEC with far less costly alternatives. (Attachments)

Other

- Prison Rape Elimination Act (PREA)
 - Bureau of Justice Statistics Survey (BJI).
 - PREA Commission will pick 3 worst and 2 best facilities using inmate self-reported data. BJI was excluded from process of selection.
 - TSCI is in the pool of 150 facilities including jails.
 - Nebraska considered the leader in the Country on PREA implementation. However, a PREA Board Member conducted survey in Nebraska ten (10) years ago.
- American Correctional Association (ACA) is developing Small Jail Standards Manual.
 - Increase safety with consistent quality.
 - Skilled way of assessing safety.
 - Fair, consistent with National standards.
 - Training Jail Officers – being done by DCS.
 - Increase Standards for Jails – discussions ongoing.
 - Meeting National Standards is more defensible from successful litigation.
 - DCS Interest:
 - Lower number and type (mentally ill, disruptive, security risks) of safe keepers sent to Department.

Attachments:

- Strategic Plan.
- Workforce Development.
- Population projection if 434 or 7540 less inmates each year.

Brown, Rochele

From: Poppert, Kyle
Sent: Thursday, October 21, 2010 9:28 AM
To: Baum, Mickie; Brown, Rochele; Douglass, Jeannene; Folts-Oberle, Angela; Glaser, Iris; Granholm, Val; Scott, Tamara; Shurter, Ginger; Sweredoski, Jim; Wilken, Kevin
Attachments: Poppert - Months between parole and revocation 1 .xls

Please note..

The Director and the Parole Board reviewed the policy and statute regarding the 2 days per month of earned good time while on parole. Traditionally this reduction has only been awarded upon successful completion of parole. The Director and the Parole Board have decided to grant the reduction for the number of months on parole prior to revocation. This will result in changes to some TRD's. I included the list for those inmates discharging within the next 2 years and their time has been adjusted by central office. I apologize the list does not include record centers, but new dream sheet should print out at your facility by tomorrow.

I expect a policy directive and announcement to the Inmate population soon.

If you have any questions, please call.
Kyle

Kyle J. Poppert
Classification and Inmate Records Administrator
Programs & Community Services
Phone: (402) 479-5750

Fax: (402) 479-5623
Kyle.Poppert@nebraska.gov

Poppert - Months between parole and revocation							
ID Nbr	Inmate Name	Parole Date	Curr Revoc Hear Dt	Months Between Parole and Revocation	Projected Good Time	TRD	New TRD
67690	GONZALES, ROBERTO	7/21/2009	3/9/2010	8	16	10/17/2010	10/1/2010
67905	FINLAN, TRACY M	11/30/2009	4/20/2010	5	10	10/18/2010	10/8/2010
66776	CAGE, FREDERICK L	5/12/2009	7/13/2010	14	28	10/20/2010	9/22/2010
69235	JONES, GERELE	3/29/2010	7/13/2010	4	8	10/29/2010	10/21/2010
56791	HERBYNN, KIMBERLY L	6/18/2009	10/20/2009	4	8	11/1/2010	10/30/2010
58980	BOOKER, RICHARDS	9/8/2008	4/21/2009	7	14	11/8/2010	10/25/2010
57435	SADECKI, FRANK V	11/24/2009	7/13/2010	8	16	11/9/2010	10/24/2010
97036	ECKERT, NANCY R	3/26/2010	5/4/2010	2	4	11/10/2010	11/6/2010
64084	RYHAMY, GARY	5/28/2008	8/24/2010	27	54	11/14/2010	9/21/2010
68369	HANSEN, NATHAN C	1/27/2010	8/24/2010	7	14	11/25/2010	11/11/2010
66653	FLORES, ADAM	7/12/2009	9/7/2010	14	28	11/26/2010	10/29/2010
66558	BUCKNER, ROBERT L	10/13/2009	7/13/2010	9	18	11/27/2010	11/9/2010
67815	PRICE, TROY D	10/31/2009	8/10/2010	10	20	11/29/2010	11/9/2010
69982	SCHIRMER, CHRISTOPHER P	3/30/2010	6/15/2010	3	6	12/3/2010	11/27/2010
43877	SLAUTER, SCOTTA	5/24/2004	3/23/2010	70	140	12/6/2010	7/19/2010
63921	HALL, SCOTTA	6/23/2008	10/21/2008	4	8	12/6/2010	11/28/2010
69333	HAWKINS, JASON	9/28/2009	7/23/2010	10	20	12/13/2010	11/23/2010
67281	DAVIS, BOBBY L	8/26/2009	2/23/2010	6	12	12/19/2010	12/17/2010
65054	MCDANIEL, CHARLES	12/31/2009	9/21/2010	9	18	12/23/2010	12/5/2010
66637	BEYER, JEROD J	6/25/2008	5/18/2010	23	46	12/29/2010	11/13/2010
96856	LIGHT, DAWNNIE M	2/18/2010	5/18/2010	3	6	12/29/2010	12/23/2010
68435	BRENAUGH, ERIC L	8/26/2009	1/12/2010	5	10	1/3/2011	12/24/2010
59277	WADE, JESSE L	4/29/2010	8/10/2010	4	8	1/10/2011	1/2/2011
65534	LYKENS, RYAN E	7/30/2007	2/24/2009	15	36	1/20/2011	1/21/2011
69352	KING, ODELL W	3/24/2010	10/5/2010	7	14	1/28/2011	1/14/2011
67346	CASARES, JASON R	12/18/2008	8/25/2009	8	16	2/1/2011	1/16/2011
94956	SCHAEFFER, MARIE C	4/25/2007	1/15/2008	9	18	2/1/2011	1/14/2011
51807	KIRTS, AARON D	5/24/2007	6/15/2010	37	74	2/2/2011	1/12/2011
61962	SHIPPS, CHAD E	6/19/2009	6/29/2010	12	24	2/4/2011	1/12/2011
63721	VANMEETER, MICHAEL D	8/29/2009	4/20/2010	8	16	2/8/2011	1/21/2011
67945	JANES, NICK R	5/31/2009	7/14/2009	2	4	2/7/2011	2/3/2011
64867	SNIDER, GARY W	10/1/2009	6/15/2010	8	16	2/8/2011	1/23/2011
63674	RUNKLES, WILLIAM R	10/30/2005	6/1/2010	20	40	2/11/2011	1/22/2011
67536	WHITE, ROBERT S	8/27/2009	5/18/2010	9	18	2/12/2011	1/25/2011
96126	JENKINS, ERICA A	3/23/2006	11/4/2008	8	16	2/15/2011	1/30/2011

Poppert - Months between parole and revocation

ID Nbr	Inmate Name	Parole Date	Curr Revoc Hear Dt	Months Between Parole and Revocation	Projected Good Time	TRD	New TRD
70201	FORSEBERG, JUSTIN S	6/28/2010	9/21/2010	3	6	2/28/2011	2/22/2011
65170	HUNTER, JAEIONA	6/23/2009	6/29/2010	12	24	3/5/2011	2/9/2011
64716	OVERGAARD, CHARLES W	10/22/2009	2/9/2010	4	8	3/19/2011	3/11/2011
66962	GOLGE, BRIAN K	6/24/2009	1/17/2009	5	10	3/28/2011	3/18/2011
69511	GRIMES, DANIEL E	12/17/2009	8/24/2010	8	16	4/7/2011	3/27/2011
64878	PAYNE, SHAY J	5/14/2009	4/20/2010	11	22	4/27/2011	3/30/2011
96796	CHRISTENSEN, BRIANNE J	9/13/2009	4/6/2010	7	14	4/29/2011	4/9/2011
69566	GRAY, TREVOR D	1/29/2010	8/24/2010	7	14	4/27/2011	4/13/2011
64364	WILLIAMS, ANTONI L	3/30/2009	6/30/2009	3	6	5/2/2011	4/26/2011
67929	MACKU, JASON L	1/6/2010	9/27/2010	8	16	5/5/2011	4/19/2011
64978	NEEMEYER, MICHAEL L	3/31/2009	4/20/2010	13	26	5/6/2011	4/10/2011
96647	DIGGINS, JODI M	2/15/2009	6/29/2010	16	32	5/12/2011	4/10/2011
55340	LITTLE, ERIC W	1/11/2005	2/13/2007	15	30	5/7/2011	4/13/2011
68836	DURAND, MICHAEL L	2/18/2010	9/21/2010	7	14	5/7/2011	5/3/2011
63241	FELIX, MICHAEL L	1/7/9/2007	4/21/2009	17	34	5/18/2011	4/14/2011
68757	WHITE, FREDERICK C	2/28/2010	5/4/2010	3	6	5/23/2011	5/17/2011
69504	CATLETT, CAMERON J	11/30/2009	4/20/2010	5	10	6/9/2011	5/30/2011
59599	NECAS, JOSHUA J	11/26/2008	5/5/2009	6	12	6/15/2011	6/4/2011
65744	ALLEN, ROBERT P	2/29/2008	9/9/2008	7	14	6/17/2011	6/3/2011
63661	PEREZ, JOHN I	9/24/2008	6/29/2010	21	42	6/30/2011	5/19/2011
63689	HASSAN, AHMAD	7/24/2008	7/13/2010	24	48	7/12/2011	5/29/2011
66825	BROOKS, LARRY D	3/25/2010	9/7/2010	6	12	7/12/2011	6/30/2011
68567	FALKNER, JASPER	1/28/2009	9/22/2009	8	16	7/23/2011	7/7/2011
69480	BATHE, DYLAN P	11/10/2009	5/4/2010	6	12	7/24/2011	7/12/2011
96713	MCNATT, SUZANNE Q	2/25/2009	3/9/2010	13	26	7/24/2011	6/28/2011
67390	ALABANZA, KALEO	6/30/2010	10/5/2010	4	8	8/4/2011	7/27/2011
99366	CRAWFORD, BARRY J	6/24/2009	1/26/2010	7	14	8/6/2011	7/23/2011
59157	HARLAN, KIM C	6/24/2008	10/21/2008	4	8	8/17/2011	8/3/2011
66761	FLOOD, JAMES	7/30/2009	1/26/2010	6	12	8/14/2011	8/2/2011
68180	BROWN, TRENTON J	1/19/2010	9/7/2010	8	16	8/7/2011	8/22/2011
57296	CASTOR, MICHAEL P	6/17/2009	8/25/2009	2	4	8/25/2011	8/21/2011
60973	ESTELLE, CHRISTOPHER T	2/29/2008	6/2/2009	16	32	9/3/2011	8/22/2011
59165	ARMSTRONG, BILLY J	8/26/2009	1/12/2010	5	10	9/8/2011	8/29/2011
68709	PICKET PIN, JAMEY K	2/17/2010	8/10/2010	6	12	9/11/2011	8/30/2011
61353	RIOS, JOSE L	2/20/2007	1/29/2008	11	22	9/16/2011	8/25/2011

Poppert - Months between parole and revocation							
ID Nbr	Inmate Name	Parole Date	Curr Revoc Hear Dt	Months Between Parole and Revocation	Projected Good Time	TRD	New TRD
60596	TRAMBLE, ARMEHD G	7/28/2008	11/4/2008	4	8	9/17/2011	9/9/2011
64563	SCHWISOW, RICK	1/27/2010	7/13/2010	6	12	9/17/2011	9/5/2011
96596	WENDLAND, MANDY J	1/22/2010	8/10/2010	7	14	10/13/2011	9/29/2011
56292	MONTELANO, CARLOS D	10/18/2007	3/24/2009	17	34	10/22/2011	9/18/2011
56809	MILLER, TERRY B	11/15/2007	10/21/2008	11	22	10/26/2011	10/4/2011
65250	MERRILL, DUSTY L	7/24/2008	4/7/2009	9	18	11/6/2011	10/19/2011
96257	STUART, TRACEY L	8/24/2007	11/4/2008	15	30	11/7/2011	10/8/2011
56275	MUHAMMAD, AMIR	12/24/2008	4/21/2009	4	8	11/14/2011	11/6/2011
96393	MCCORMICK, SUZANNE D	1/22/2010	6/29/2010	5	10	12/4/2011	11/24/2011
66217	MANGELSEN, RONALD P	4/29/2008	12/29/2009	20	40	12/8/2011	10/29/2011
56917	JOHNSON, KEVIN C	10/26/2005	7/18/2006	9	18	12/12/2011	11/24/2011
66341	FITZGERALD, JOSEPH	1/19/2010	2/9/2010	1	2	12/27/2011	12/25/2011
66596	HELLBUSCH, CHARLES W	11/20/2008	7/27/2010	20	40	1/4/2012	11/25/2011
64378	SMITH, MARK A	3/31/2008	7/15/2008	4	8	1/5/2012	12/28/2011
66839	DELEON, JAVIER	6/18/2009	1/12/2010	7	14	1/14/2012	12/31/2011
64112	JOHNSON, VERNON R	11/26/2008	10/5/2010	23	46	1/15/2012	11/30/2011
66048	FAISON, IMARIA C	12/29/2008	2/24/2009	2	4	1/17/2012	1/13/2012
68229	ROBINSON, MARVIN K	8/26/2009	6/15/2010	10	20	1/19/2012	12/30/2011
66339	JADAMS, ANDREW R	11/20/2006	5/5/2009	6	12	1/24/2012	1/12/2012
63727	RHODES, TOMMIE J	10/26/2006	12/19/2006	2	4	2/26/2012	2/24/2012
68842	HAACKE, DANIEL J	8/20/2009	2/9/2010	6	12	3/6/2012	2/23/2012
96590	MCCORMICK, JENINNE M	5/23/2009	6/15/2010	13	26	3/23/2012	2/26/2012
61712	MALERUS, CHANGE J	10/29/2007	6/16/2009	20	40	4/12/2012	3/3/2012
63081	JIROVSKY, JOHN F	9/29/2009	8/10/2010	11	22	4/15/2012	3/24/2012
61871	SCOTT, ERROL V	7/15/2008	8/11/2009	13	26	4/27/2012	3/26/2012
66297	JONES, THOMAS	2/19/2009	6/21/2009	4	8	4/27/2012	4/19/2012
61237	KING, ANTHONY R	5/30/2008	8/11/2009	15	30	5/7/2012	4/7/2012
68052	GILPIN, BRANDON	3/24/2010	9/7/2010	6	12	6/10/2012	5/29/2012
63641	NIELSEN, MICHAEL K	10/28/2008	3/10/2009	5	10	7/17/2012	6/21/2012
62275	DYAL, KEITH W	4/23/2009	4/20/2010	12	24	7/4/2012	6/10/2012
64016	LOCK, NATHAN L	1/21/2009	5/4/2010	16	32	7/6/2012	6/4/2012
61207	MCCUINN, DAVID	12/17/2009	8/10/2010	8	16	7/20/2012	7/4/2012
58280	TWO BULLS, JOSHUA	7/30/2008	3/23/2010	20	40	7/28/2012	6/18/2012
66314	GREENFIELD, JOSHUA C	9/29/2008	2/10/2009	5	10	8/14/2012	8/4/2012
45324	CLAUSEN, TIMOTHY J AKA HUGHES	10/22/2009	5/4/2010	7	14	8/26/2012	8/12/2012

Poppert - Months between parole and revocation										
ID Nbr	Inmate Name	Parole Date	Curr Revoc Hear Dt	Months Between Parole and Revocation	Projected Good Time	TRD	New TRD			
53687	SPENCER, NATHANIEL E	5/26/2009	7/14/2009	2	4	9/21/2012	9/17/2012			
67260	JONES, DARYL P	7/28/2008	4/21/2009	9	18	10/13/2012	9/25/2012			
67347	HARRIS, LARRY D	11/24/2009	10/5/2010	11	22	10/18/2012	9/26/2012			
51212	PETTIS, THOMAS E	9/8/2006	2/13/2007	5	10	10/25/2012	10/15/2012			
64266	FLETCHER, DALE	1/12/2006	4/21/2009	5	10	12/17/2012	12/7/2012			
Average Months Between Parole and Revocation					9	2164	20			
					Days	Avg				

From: Kenney, Mike
Sent: Thursday, August 07, 2014 3:36 PM
To: Poppert, Kyle
Subject: RE: parole good time

Yes.
That's what I think should happen.

Sent from my Verizon Wireless 4G LTE smartphone

----- Original message -----
From: "Poppert, Kyle"
Date: 08/07/2014 1:47 PM (GMT-06:00)
To: "Kenney, Mike"
Subject: RE: parole good time

We have one that's scheduled for tomorrow.
his TRD and hold him.
Kyle

Looks like he got 2 next week. I will have Angela recalculate

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

Change is inevitable, growth is optional.

From: Kenney, Mike
Sent: Thursday, August 07, 2014 1:40 PM
To: Poppert, Kyle
Subject: Fwd: parole good time

I think we should make the TRD extended with the GT loss based on what we know. ...if we have early releases again it will be hard to explain. Let's discuss.

Sent from my Verizon Wireless 4G LTE smartphone

----- Original message -----
From: "Poppert, Kyle"
Date: 08/07/2014 1:01 PM (GMT-06:00)

To: "Folts-Oberle, Angela" ,"Baum, Mickie" ,"Shurter, Ginger" ,"Johnson, Takako" ,"Wellman, Mary" ,"Kristalyn, Kendra" ,"Lytle, Diane" ,"Thompson, Anne" ,"Wilken, Kevin" ,"Granholm, Val" ,"Jordan, Curt" ,"Wayne, Larry" ,"Kenney, Mike"
Subject: RE: parole good time

We need to wait for clarification from the AG's office regarding our past practices.
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.

From: Folts-Oberle, Angela
Sent: Thursday, August 07, 2014 12:50 PM
To: Poppert, Kyle; Baum, Mickie; Shurter, Ginger; Johnson, Takako; Wellman, Mary; Kristalyn, Kendra; Lytle, Diane; Thompson, Anne; Wilken, Kevin; Granholm, Val; Jordan, Curt; Wayne, Larry; Kenney, Mike
Subject: RE: parole good time

I'm assuming we need to review all upcoming discharges due to this change?

Angela Folts-Oberle
DEC/LCC Records Manager
402-479-6341
Angela.folts-oberle@nebraska.gov

From: Poppert, Kyle
Sent: Thursday, August 07, 2014 11:45 AM
To: Baum, Mickie; Shurter, Ginger; Johnson, Takako; Folts-Oberle, Angela; Wellman, Mary; Kristalyn, Kendra; Lytle, Diane; Thompson, Anne; Wilken, Kevin; Granholm, Val; Jordan, Curt; Wayne, Larry; Kenney, Mike
Subject: parole good time

The Attorney General's Office clarified how we should handle parole good time.

Their opinion is as follows:

In our opinion, good time credits earned pursuant to Neb.Rev.Stat. § 83-1,108(1) do not apply to an inmate's tentative release date if the inmate's parole is revoked. Neb.Rev.Stat. § 83-1,108(1) states that "[T]he board shall reduce, for good conduct in conformity with the conditions of parole, a parolee's parole term by ten days for each month of such term. The total of such reductions shall be deducted from the maximum term, less good time granted pursuant to section 83-1,107, to determine the date when discharge from parole becomes mandatory." (emphasis added). This section authorizes the grant of good time credits while on parole but provides that they are to be applied only to the mandatory discharge date from parole. A parolee whose parole is revoked ceases to have a "parole discharge date" and thus there is nothing against which the credit can be applied.

Parole good time credit does not apply to the tentative release date of parole violators. I know there may be a number of inmates who are parole violators who had their maximum term reduced in error and we are seeking clarification of how to proceed from the AG's office.

Please implement this policy immediately.

**Thanks
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.

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.

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Rough Draft

LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

parenthetically: It would also serve the director's desires as well to not increase our population any more than we must. Do you see that? [LR424]

JEANNENE DOUGLASS: Yes. [LR424]

SENATOR LATHROP: And you're communicating...or you're referencing the director's desires. Did you talk to then-Director Houston about this matter before you sent the e-mail? [LR424]

JEANNENE DOUGLASS: No. [LR424]

SENATOR LATHROP: You suggest that you have some insight into what the director wants or his desires with respect to overcrowding or the population in the prison. [LR424]

JEANNENE DOUGLASS: Yes. [LR424]

SENATOR LATHROP: Okay. Tell us, have you ever been in a meeting with Director Houston where he has talked about the overcrowding situation and the role good time plays in alleviating overcrowding? [LR424]

JEANNENE DOUGLASS: Not with the director, I haven't. [LR424]

SENATOR LATHROP: Who...well, okay, so not with the director. Have you been in any meetings with any deputy directors or higher-ups we'll call them where the role of good time was discussed as a means to alleviate overcrowding in the penitentiary? [LR424]

JEANNENE DOUGLASS: The only meetings I would have been in would have been records managers' meetings. And we always discuss all kinds of issues that affected the inmates and their good time and their sentencing. [LR424]

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LR424 Department of Correctional Services Special Investigative Committee
September 04, 2014

SENATOR LATHROP: Okay. My question had to do with overcrowding... [LR424]

JEANNENE DOUGLASS: Overcrowding. [LR424]

SENATOR LATHROP: ...because your comment at the end of this e-mail suggests that you're in tune with the director's interest in alleviating overcrowding and the use of the good time law to aid in alleviating overcrowding. [LR424]

JEANNENE DOUGLASS: May I say this? As I've said, as a records manager, I did not have any authority to change any policy or write policy. But I was also involved in, like I said, the records managers' meetings. I worked closely with people above me from the director's area. And it's not uncommon to have conversations or hear people talk about the overcrowding and saying, well, we need to do this, we need to do that, we need to... [LR424]

SENATOR LATHROP: What is the "this" and the "that"? [LR424]

JEANNENE DOUGLASS: The "thises" and "thats," they were finding ways to...they, the director and his staff, were trying to find ways to lessen the population to alleviate... [LR424]

SENATOR LATHROP: How do you know that? [LR424]

JEANNENE DOUGLASS: Just from conversations and... [LR424]

SENATOR LATHROP: Conversations with whom? [LR424]

JEANNENE DOUGLASS: Well, they would restore good time. They would change policy as to how good time was taken. They...there was one instance where they...I was

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directed to...I, we records managers were directed to continue to give an inmate...a parolee, once his parole was revoked, we were still supposed to credit their sentence with the parole good time which would bring their discharge date earlier. I knew that was wrong by statute, but I was ordered to do it so I had to do it. [LR424]

SENATOR LATHROP: Who ordered you to do that? [LR424]

JEANNENE DOUGLASS: Our records administrator. [LR424]

SENATOR LATHROP: And that, by the way, ended up being the subject of an Attorney General Opinion letter that said you're breaking the law. [LR424]

JEANNENE DOUGLASS: That's what I understand. That happened after I retired. [LR424]

SENATOR LATHROP: But you knew that it was wrong and you did it because you'd been admonished to or directed to. [LR424]

JEANNENE DOUGLASS: Exactly. [LR424]

SENATOR LATHROP: And that would have been by Kyle Poppert. Yes? [LR424]

JEANNENE DOUGLASS: Yes. I'm sorry. [LR424]

SENATOR LATHROP: Unfortunately, the record won't pick up you shaking your head... [LR424]

JEANNENE DOUGLASS: I understand. I'm sorry. [LR424]

SENATOR LATHROP: ...so I'm going to ask you to give verbal responses. So tell us

LT. FRANK: 'K

ANGELA FOLTS-OBERLE: Yes, because I...if Ron Reithmueller was sitting there with the knowledge that he had...that Supreme Court ruling in 2013, I think things would have been different and that...the difference between those two is knowledge of Records

LT. FRANK: 'K. Do you think anything was intentionally done?

ANGELA FOLTS-OBERLE: No

LT. FRANK: Explain that to me

ANGELA FOLTS-OBERLE: Uhm, I have never had...I've...I've dealt with legal directly, on certain situations, you know, asking their advice on how do I handle a certain case. Uhm, and I've gone through them through Mickie and through Kyle and gotten answers back. I...I've never experienced with them or Kyle where I thought it was something wasn't being done because there was intent not to follow the law

LT. FRANK: Ok

ANGELA FOLTS-OBERLE: Not once

LT. FRANK: 'K. Is there, was there any intent you think because of the prison overcrowding to get...get guys out the door quicker...

ANGELA FOLTS-OBERLE: Not this...not this specific with mandatory minimums, no

LT. FRANK: Ok. Nothing to do with mandatory minimums as far as getting people out the door?

ANGELA FOLTS-OBERLE: No

LT. FRANK: 'K. Was...do you feel pressure with that at all?

ANGELA FOLTS-OBERLE: Pressure as far as...?

LT. FRANK: Overcrowding or...doing something to alleviate the overcrowding?

ANGELA FOLTS-OBERLE: Uh, not so much recently. There have been some decisions that we have dealt with and some uh, policy changes within Records that I felt were due to overcrowding

LT. FRANK: Ok

ANGELA FOLTS-OBERLE: Yes

LT. FRANK: And when...when was that?

ANGELA FOLTS-OBERLE: Uhm, in 2011 we uhm, Kyle Poppert had went to the Director (inaudible) at the time, and what, inmates when they go out on parole they start earning an additional good time...

LT. FRANK: Uh huh (yes)

ANGELA FOLTS-OBERLE: And uhm, and what we had done for years previous to 2011, is they come back on a revocation and they get revoked, their release dates goes back to their original release date and they don't get that extra parole good time, is what we call it

LT. FRANK: Right

ANGELA FOLTS-OBERLE: Ya know, for LB364 they get two days a month and 191 they get 10 days a month extra. So, when an inmate goes out on parole, Mickie Baum, she will figure out, we have cal...we do have that in our computer, will calculate if he finishes his whole term on parole, with either two days a month or 10 extra days a month, his new release date is...so what they decided to do, and I know this was due to overcrowding, was well, even though they're revoked, we're gonna go ahead and give 'em parole credit for the time they were out

LT. FRANK: Ok

ANGELA FOLTS-OBERLE: They have since reserved that in the last two weeks

LT. FRANK: A lot of things have probably changed within the last few weeks aren't they?

ANGELA FOLTS-OBERLE: Right. So that is just an example...

LT. FRANK: Now...

ANGELA FOLTS-OBERLE: ...of why I think they decided to give that parole credit, because in the memo it talks about how many inmates with their TRD's would be affected...

LT. FRANK: Right

ANGELA FOLTS-OBERLE: ...if we could give 'em this parole credit. That was something all of us disagreed with because we did not think that that was what the law intended, but when your legal team reviews it, your Director ok's it, ya know, you move and...

LT. FRANK: Correct

ANGELA FOLTS-OBERLE: ...and you give everybody the parole...we went through and gave everybody parole credit if they'd been out on parole

LT. FRANK: 'K. And that was strictly and overcrowding issue?

ANGELA FOLTS-OBERLE: I think...

LT. FRANK: Makes sense

ANGELA FOLTS-OBERLE: I...I truly do, yes

LT. FRANK: 'K

KYLE POPPERT: ...in writing

LT. FRANK: But on...but on your parole one, when you guys were, made that decision, was it just a few weeks ago you reserved that decision, correct?

KYLE POPPERT: Yes

LT. FRANK: Ok

KYLE POPPERT: Yeah, because then after all of this, one of Director Kenney's thing's was, look if there's anything out there looming, that could possibly cause us, ya know embarrassment or, we may not be doing things right, uhm, you need to bring that, I mean, to all of us, you need to bring that to my attention. And I brought to his attention the parole good time. There's an issue on the way we uhm, when inmates get misconduct reports there's two different levels, you know, one that can be handle kind'a in-house, they give up certain rights when they go to institutional disciplinary committee. They can't lose good time or that but they also give up the right to appeal

LT. FRANK: Uh huh (yes)

KYLE POPPERT: And one thing that we did on this is in the LB191 credits is based upon in this conduct report history, so inmates on IDC, even though they've given up the right to appeal, could potentially lose good time later on if they get a number of misconduct reports and I felt that was kind've unfair, we're taking something, in my eyes, without any due process.

LT. FRANK: 'K. Has there been any pressure on you or anybody else that you're aware of to try to eliminate the overcrowding by doing some of this stuff or...?

KYLE POPPERT: Well, yes. I mean I think that there have been clear goals to do everything we can to eliminate overcrowding, but all legal ways of doing things, messing with somebody's sentence is not one of those things

LT. FRANK: 'K

KYLE POPPERT: For example, we used to take, be pretty liberal about taking away good time for parole violations and the public's perception is is we just stop taking away parole good time, just to deal with temporary overcrowding issue, but really what we started to learn over the last three-five years, whatever, is that, you know, public safety, it's easy to keep the public safe when the inmates are behind a fence and we used to kind'a take this approach, that well when they discharge they're not our problem, you know...

LT. FRANK: Uh huh (Yes)

KYLE POPPERT: ...but it really started a few years ago that they are our problem when they discharge and our mission is to try and put 'em out in the community better than what they are. So, for example, taking good time for a parole violation when somebody's relapsing and punishing them because of that, probably isn't the best practice to try and eliminate long-term public safety. So yeah, we could keep 'em locked up for 30 more days but if we tried to do other remedies knowing that uhm, relapse is...is part of

STATE OF NEBRASKA

DEPARTMENT OF CORRECTIONAL SERVICES
Michael L. Kenney
Director



Dave Heineman
Governor

August 7, 2014

TO: Records Managers

Handwritten initials, possibly "KJP", in blue ink.

FROM: Kyle J. Poppert, Records Administrator

RE: Parole Good Time

Good time credits earned pursuant to Neb.Rev.Stat.§ 83-1,108(1) do not apply to an inmate's tentative release date if the inmate's parole is revoked. Neb.Rev.Stat.§ 83-1,108(1) states that "[T]he board shall reduce, for good conduct in conformity with the conditions of parole, a parolee's parole term by ten days for each month of such term. The total of such reductions shall be deducted from the maximum term, less good time granted pursuant to section 83-1,107, to determine the date when discharge from parole becomes mandatory." (emphasis added).

This section authorizes the grant of good time credits while on parole but provides that they are to be applied only to the mandatory discharge date from parole. A parolee whose parole is revoked ceases to have a "parole discharge date" and thus there is nothing against which the credit can be applied.



STATE OF NEBRASKA
Office of the Attorney General

2116 STATE CAPITOL BUILDING
LINCOLN, NE 68509-8920
(402) 471-2682
TDD (402) 471-2682
FAX (402) 471-3297 or (402) 471-4726

AMIE LARSON
ASSISTANT ATTORNEY GENERAL

JON BRUNING
ATTORNEY GENERAL

August 7, 2014

Michael L. Kenney, Director
Nebraska Department of Correctional Services
Folsom & West Prospector Plaza, Bldg. 1
P.O. Box 94661
Lincoln, NE 68509-4661

RE: Good Time Credits Earned by a Parolee

Dear Director Kenney:

In an email dated July 23, 2014, George Green asked this office for an opinion on the following question:

Do the good time credits earned by a parolee apply to his or her tentative release date if the inmate's parole is revoked? If so, does the sentence revert to the maximum term or does the inmate retain the good time credits earned during prior months?

In our opinion, good time credits earned pursuant to Neb. Rev. Stat. § 83-1,108(1) do not apply to an inmate's tentative release date if the inmate's parole is revoked. Neb. Rev. Stat. § 83-1,108(1) states that "[T]he board shall reduce, for good conduct in conformity with the conditions of parole, a parolee's parole term by ten days for each month of such term. The total of such reductions shall be deducted from the maximum term, less good time granted pursuant to section 83-1,107, to determine the date when discharge from parole becomes mandatory." (emphasis added).

This section authorizes the grant of good time credits while on parole but provides that they are to be applied only to the mandatory discharge date from parole. A parolee whose parole is revoked ceases to have a "parole discharge date" and thus there is nothing against which the credit can be applied.

Sincerely,

JON BRUNING
Attorney General

Amie Larson
Assistant Attorney General

Sweredoski, Jim

From: Poppert, Kyle
Sent: Thursday, January 20, 2011 2:19 PM
To: Scott, Tamara; Brown, Rochelle; Fotts-Oberle, Angela; Glaser, Iris; Baum, Mickle; Wilken, Kevin; Granholm, Val; Sweredoski, Jim; Shurter, Ginger; Douglass, Jeannene
Subject: good time

Angela had a question regarding awarding parole good time while an offender is on abscond status. We will award good time while an inmate is on abscond status.

When considering time calculations figure the time on parole, from the effective day on parole, until the date of revocation.

The Director wanted me to remind everyone that these time calculations must be a top priority. I know everyone is very busy and I appreciate your efforts.

Becki contacted the CTS people and we are working on programming for another good time law. This would allow us to credit good time and keep track of it.

I will keep you updated.
Kyle

Kyle J. Poppert
Classification and Inmate Records Administrator
Programs & Community Services
Phone: (402) 479-5750

Fax: (402) 742-2349
Kyle.Poppert@nebraska.gov

1/20/2011

Brown, Rochele

From: Poppert, Kyle
Sent: Thursday, October 21, 2010 9:28 AM
To: Baum, Mickle; Brown, Rochele; Douglass, Jeannene; Folts-Oberle, Angela; Glaser, Iris; Granholm, Val; Scott, Tamara; Shurter, Ginger; Sweredoski, Jim; Wilken, Kevin
Attachments: Poppert - Months between parole and revocation 1.xls

Please note..
The Director and the Parole Board reviewed the policy and statute regarding the 2 days per month of earned good time while on parole. Traditionally this reduction has only been awarded upon successful completion of parole. The Director and the Parole Board have decided to grant the reduction for the number of months on parole prior to revocation. This will result in changes to some TRD's. I included the list for those inmates discharging within the next 2 years and their time has been adjusted by central office. I apologize the list does not include record centers, but new dream sheet should print out at your facility by tomorrow.

I expect a policy directive and announcement to the inmate population soon.

If you have any questions, please call.
Kyle

Kyle J. Poppert
Classification and Inmate Records Administrator
Programs & Community Services
Phone: (402) 479-5750
[REDACTED]
Fax: (402) 479-5623
Kyle.Poppert@nebraska.gov

STATE OF NEBRASKA

DEPARTMENT OF CORRECTIONAL SERVICES
Michael L. Kenney
Director



Dave Heineman
Governor

Senator Steve Lathrop
District 12, State Capitol
P.O. Box 94604
Lincoln, NE 68509-4604

October 21, 2014

RE: Testimony of Director Mike Kenney 10-10-14

Dear Senator Lathrop,

I am asking that this letter be added to my testimony of October 10, 2014.

I, the undersigned, do solemnly swear that the following statement is the truth:

In late June, I met with Governor Heineman and Attorney General Bruning and members of their staff. The purpose of the meeting was to discuss a strategy to address approximately 40 inmates that had mistakenly been released early, and, with the application of "Anderson" time, had additional time remaining on their sentences. It was decided that of those 40, we would seek warrants for approximately twenty that had a recalculated sentence date later than January 1, 2015. The approximately twenty remaining who had less than six months left to serve were then discussed. I remarked that due to the shortness of time left on their sentences and their stability in the community, I didn't think it served any correctional goal or justice purpose to seek warrants for them to be brought back to prison. I said I would work with the Parole Board to seek approval for placing them on parole status or the Re-Entry Furlough Program (RFP), which I did.

Of those twenty, several were placed on RFP, some were paroled and some we were not able to locate. The ones we were not able to locate were referred to the Nebraska State Patrol Fusion Center in an attempt to find them. There were three inmates that did not meet the criteria for Parole or RFP, but were available and stable in the community. And, in late September, in view of a recent Attorney General opinion, we determined two paroled inmates who were not yet eligible for parole, had additional time to serve beyond their calculated earned discharge date. These five were fully cooperative in being placed on a status I referred to as temporary alternative placement (TAP). The placements were as follows:

<u>Inmate</u>	<u>Number</u>	<u>Original TRD</u>	<u>Adjusted TRD</u>	<u>Date placed on TAP</u>
Johnson, Samuel	75146	2-24-14	8-24-14	8-1-14
Petit, Richard	71238	3-18-13	9-18-14	7-31-14
Temple, Benji	79214	4-3-14	10-3-14	8-1-14
Nordboe, Jeremy	75973	4-11-14	10-5-14	9-23-14
Gibbs, Ronell	76453	4-4-14	10-22-14	9-23-14

I wanted to be able to explain this process specifically during my testimony but was interrupted sufficiently that I was unable to deliver the following in its entirety. This status was developed based on State Statute 83 –176 which states the Director of Correctional Services *“may designate as a place of confinement of a person committed to the department any (emphasis mine) available, suitable and appropriate residence facility or (emphasis mine) institution, whether or not operated by the state...”*

Because the Parole Officers had approved these residences and because the individuals agreed to wear electronic monitoring bracelets continuously and report to an assigned Parole Officer twice weekly, it was within my authority to implement TAP by placing them in their current residences.

TAP was designed solely by me, as a one-time dispensation, lasting a total of 84 days from July 31, 2014 to October 22, 2014. The shortest duration of any Individual on TAP was 12 days and the longest duration was for 64 days. As of October 22, 2014, there are no inmates remaining on TAP nor will there be in the future. It has served the temporary purpose for which it was created and resulted in no harm to the community. As far as it being a success, five inmates were able to live at home, maintain their jobs, pay taxes and do exactly what we expect an inmate to do as he / she reintegrates into the community.

As an experienced correctional practitioner, it would have been an error in judgment to disrupt their successful reintegration by returning them to prison for such a minimal amount of time.

Furthermore, I strongly reject any suggestion that I discussed the TAP program with either Governor Heineman or General Bruning. Any assertion by George Green that the Governor or Attorney General were involved in this decision is a misunderstanding on Mr. Green’s part. I made this decision independent of any knowledge or consultation with Governor Heineman or Attorney General Bruning.

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(A sidebar was had off the record.)

THE COURT: All right. Let's take a ten-minute break at this time. Okay?

(10:18 a.m. -- Recess taken.)

(At 10:32 a.m. on July 10, 2014, with all counsel for the parties present as before, and with the defendant being present in person, the following proceedings were had:)

(Exhibit No. 41 was marked for identification.)

THE COURT: Doctor, I need to swear you in. Please raise your right hand.

JANE DAHLKE, M.D.,

Called as a rebuttal witness on behalf of the Defendant, having been first duly sworn, testified as follows:

THE COURT: All right. Ready to proceed then?

MR. RILEY: Yes.

THE COURT: Mr. Riley, please.

MR. RILEY: Just by way of before I begin my inquiry, this is a little out of order. We're trying to accommodate professionals' schedules and, basically, Dr. Dahlke's testimony is going to center around she's the doctor who evaluated him when he was eight years old and it, basically, would be used

DR. JANE DAHLKE - DIRECT (Riley)

1 primarily as rebuttal to the feigning of mental
2 illness so -- and I talked with opposing counsel and
3 they're okay with the out of order part.

4 THE COURT: Correct, Mr. Kleine?

5 MR. KLEINE: Yes.

6 THE COURT: All right. Thank you very
7 much.

8 You may proceed, Mr. Riley.

9 MR. RILEY: Thank you.

10 DIRECT EXAMINATION

11 BY MR. RILEY:

12 Q. Would you just identify yourself and spell your name,
13 please?

14 A. My name is Dr. Jane Dahlke, D A H L K E.

15 Q. And did you, prior to your testimony, have a CV that
16 you gave to me?

17 A. Yes, I just gave that to you.

18 MR. RILEY: All right. I'll offer it as
19 41.

20 MR. KLEINE: No objection.

21 THE COURT: Exhibit 41 is received into
22 evidence, the curriculum vitae of Dr. Dahlke.

23 Q. (By Mr. Riley) All right. Just -- just briefly, you
24 don't have to go through the whole thing, but just
25 generally what is your field of profession?

- 1 A. I'm a -- I'm a psychiatrist and then I did a
2 fellowship in child psychiatry.
- 3 Q. All right. And are you currently practicing?
- 4 A. Yes, I am.
- 5 Q. All right. And for how long have you been practicing?
- 6 A. Um, it's been a long time. I think since 1976.
- 7 Q. All right. And in the course of your career you said
8 you had a specialty in adolescent or child psychiatry?
- 9 A. I do.
- 10 Q. Okay. And were you a doctor who had privileges at,
11 among other hospitals, Richard Young?
- 12 A. Yes, I did.
- 13 Q. All right. And at my request were you able to pull
14 some records of an individual to refresh your memory
15 about treating him?
- 16 A. Yes, I did.
- 17 Q. And I'm specifically referring to Nikko Jenkins.
- 18 A. Yes.
- 19 Q. And you do have and have had a chance to review these
20 records from it looks like 1995?
- 21 A. Yes.
- 22 Q. All right. And how was it -- what was the occasion
23 that caused you to come into contact with Mr. Jenkins,
24 Doctor?
- 25 A. He was evaluated at the Access Center at Richard Young

1 Hospital in 1995, and it was determined that he had
2 enough problems to be admitted to the hospital. And I
3 was on call, or they called me and asked me if I would
4 accept him as a patient, and I said that I would.

5 Q. All right. And how old was he at that time?

6 A. He was eight years old.

7 Q. All right. Now, at the time that you had contact with
8 him, was there a process, an evaluation process that
9 you went through, to assist in diagnosing his
10 situation?

11 A. Yes. He was evaluated at the Access Center.

12 THE COURT: At the what center, Doctor?

13 THE WITNESS: Access Center.

14 THE COURT: A C C E S S ?

15 THE WITNESS: Yes, right.

16 And he was evaluated by a social worker, a Jean
17 Johnson (phonetic), and I -- when I saw him, when I
18 did my -- I did my evaluation myself when I saw him
19 probably the next day or something.

20 Q. (By Mr. Riley) All right. And how was it that --
21 what was the reason for him being in the Access
22 Center? What precipitated that?

23 MS. BEADLE: At this time, Your Honor, the
24 State would object to relevancy and then I would ask
25 to just do a short voir dire of this witness.

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THE COURT: Okay, please.

VOIR DIRE EXAMINATION

BY MS. BEADLE:

Q. Doctor, you indicated that you have -- you had evaluated the defendant, Nikko Jenkins, when he was eight years old, in 1995?

A. I did.

Q. When is the last time you've actually seen him or met with him?

A. Um, the last time I saw him was about a year and a half after that, which was at my office.

Q. Okay. So almost 20 years ago?

A. Well, I think we're talking 19 years ago or, you know, something, yeah.

Q. Okay. And you -- do you perform competency evaluations in your occupation or profession?

A. I don't do much of that in my child psychiatry field.

Q. All right. And you did not -- fair to say you did not evaluate Nikko Jenkins for purposes of competency for this hearing?

A. No, I didn't. No, I saw him many years ago.

MS. BEADLE: That's all I have, Your Honor.

THE COURT: All right. As I understand, this is a rebuttal witness.

MS. BEADLE: I understand.

DR. JANE DAHLKE - DIRECT (Riley)

1 THE COURT: Okay.

2 MS. BEADLE: I still object as to
3 relevance.

4 THE COURT: Very well. Overruled.

5 MS. BEADLE: Thank you.

6 DIRECT EXAMINATION RESUMED

7 BY MR. RILEY:

8 Q. All right. Was there -- was there some event that
9 precipitated this eight-year-old Mr. Jenkins to be
10 presented in a psychiatric setting?

11 A. Um, yes, there was.

12 Q. Tell the Court what happened.

13 A. He was brought to the Access Center at Richard Young
14 by his mother because he had been increasingly
15 aggressive toward other people and he was making some
16 statements of self-harm.

17 Q. Okay. Now, did you -- in your evaluation of him, was
18 he eventually hospitalized?

19 A. Yes, he was.

20 Q. For approximately how long?

21 A. Um, I'm going to say like 11 days.

22 Q. All right. And did you make a diagnosis as to a
23 mental disorder?

24 A. I did.

25 Q. All right. Now, before we get to that, we're talking

1 about 1995. And have there been some change in the
2 field of psychiatry concerning diagnosis of
3 eight-year-old children from 1995 to today?

4 A. There have been, yes.

5 Q. Would you explain, specifically in reference to how
6 it's germane to this case, what's different today than
7 from 1995?

8 A. Um, well, first of all, I will tell you what I
9 diagnosed him with.

10 Q. Okay.

11 A. I diagnosed him at the end of his hospitalization with
12 oppositional defiant disorder, attention deficit
13 hyperactive disorder and functional enuresis.

14 Q. Okay. And at the time, in 1995, would -- was it --
15 was it approved in the psychiatric field to make
16 diagnosis of an eight-year-old of having a major
17 mental illness?

18 A. I -- there was -- yes, some were -- some types of
19 diagnosis -- major diagnoses were made, um, such as
20 schizophrenia.

21 Q. Okay.

22 A. But we weren't thinking along the lines of bipolar
23 disorder.

24 Q. All right. And you have brought some records with you
25 concerning your notes that you had taken and whether

1 or not they fit the criteria for bipolar disorder?

2 A. I -- I do have some with me, yes.

3 Q. All right. And these are observations you made at the
4 time, in 1995?

5 A. Right.

6 Q. All right. So would you have made the same diagnosis
7 today as you did in 1995?

8 A. No, I would not have.

9 Q. What would it be today?

10 A. It would have been some form of childhood -- I'm
11 sorry, childhood bipolar disorder.

12 Q. All right. Was he treated with medication?

13 A. He was.

14 Q. What are the characteristics that you observed with
15 regard to Mr. Jenkins that fit him into the DSM area
16 of bipolar?

17 A. I could -- I could list a number of things that I saw
18 with him.

19 Q. Would you, please?

20 A. I'll do that. And I'm finding these in not only my
21 evaluation but the initial evaluation that was done at
22 the Access Center at Richard Young.

23 Q. Okay.

24 A. So some of the things that I noted are the fact that
25 he did show increasing aggression toward others and

DR. JANE DAHLKE - DIRECT (Riley)

1 statements of self-harm. He had -- a year and a half
2 before he came to the hospital he had taken a gun to
3 school. He -- just a couple of weeks before he was
4 hospitalized he was chasing his sister around the
5 house with a knife. He was making threats to kill
6 people. He was instigative to his sisters on a daily
7 basis. He was making suicidal and homicidal
8 statements. He was -- in the Access Center he
9 appeared to be invulnerable, you know, as if nothing
10 could happen to him, which I see in the line of
11 grandiosity.

12 He had made some suicidal plans, such as thoughts
13 about stabbing himself with a knife. His mother
14 described that she had seen wide mood swings. And
15 while he was in the Access Center he showed a range of
16 moods going from happy to angry to sad to irritable.
17 He showed a range of moods there.

18 He felt that no one would ever harm him and it
19 made him do some risk-taking behaviors. He also
20 talked about hearing voices that would tell him to
21 steal. He had nightmares about his father coming into
22 his house and shooting his mother.

23 Q. And this is when he's eight years old?

24 A. Yes.

25 Q. All right. Continue, please.

DR. JANE DAHLKE - DIRECT (Riley)

1 A. Let's see. Just a minute.

2 Q. I'm sorry I interrupted you.

3 A. No, no problem, because, you know, I'm going from
4 paper to paper.

5 He had been oppositional at school and at home.
6 A lot of times you see that along with a bipolar
7 picture. He was showing poor insight and judgment.
8 And so some of -- those are some of the things that he
9 was showing when he came to the hospital.

10 Q. All right. And those are tools that you would use
11 to make a diagnosis today as well as back then,
12 correct?

13 A. Yes.

14 Q. And what you're saying is that the difference is back
15 then the field of psychiatry was not making a
16 diagnosis of bipolar or some type of bipolar disorder
17 at the age of eight, correct?

18 A. Right. We were -- you know, we were thinking that
19 bipolar disorder started, oh, approximately age 17 at
20 that time.

21 Q. Okay. And that's no longer the accepted approach,
22 correct?

23 A. Right.

24 Q. Okay. Now, the hospitalization that we're speaking
25 about was -- the purpose of the hospitalization was to

1 treat a mental disorder, correct?

2 A. Yes.

3 Q. All right. And one of the things that is always an
4 issue in a case -- a situation like this is whether
5 someone is faking mental illness. Do eight-year-olds
6 fake mental illness?

7 A. I don't see it very often.

8 Q. Okay. And when you -- whenever you as a professional
9 do an evaluation of any patient, whether or not
10 they're reporting accurately is something that you
11 have to consider, correct?

12 A. Right.

13 Q. And how do you do that?

14 A. Well, we go not only by what the patient says but we
15 also go by their actions, you know, so you get a
16 combination of ways of looking at the picture.

17 Q. All right. And, of course, we have a -- you have a
18 situation where he's being observed 24-7 when he's
19 hospitalized, correct?

20 A. Right.

21 Q. All right. Was there -- upon his discharge was there
22 a follow-up plan --

23 A. Yes.

24 Q. -- that was put in place?

25 A. There was a follow-up plan.

1 Q. And, obviously, an eight-year-old is not necessarily
2 able to get from point A to point B on their own?

3 A. Right.

4 Q. So it's dependent upon some adults, correct, to
5 facilitate the follow-up?

6 A. Yes.

7 Q. Is that right?

8 A. Yes.

9 Q. And just generally what was your impression of the
10 follow-up or the lack thereof?

11 A. Um, he was referred to the partial program at the
12 hospital where he comes in during the day and attends
13 a school program and a psychiatric program. And he
14 did follow -- they did follow through with that.

15 And then after that he was referred to follow up
16 with me in my office. And I didn't see him until
17 about nine months after that.

18 Q. So you saw him once in the nine-month period?

19 A. Well, what I'm saying is the -- you know, the
20 follow-up in my office didn't start for another nine
21 months.

22 Q. I see.

23 A. So it was not followed through on.

24 Q. Okay. All right. And how did -- how did he terminate
25 any interaction with you, or how did that occur? He

1 just stopped showing up?

2 A. Well, you know, it was started at my office nine
3 months after the end of the partial hospitalization,
4 and then I saw him for about a nine-month period for
5 that. And then I just -- there was just a no show and
6 I didn't see him anymore.

7 Q. All right. In your opinion, was he feigning mental
8 illness?

9 A. I -- I didn't see that he would have had any reason to
10 feign mental illness or have any secondary --
11 secondary gain for that. So what I observed and what
12 was reported to me I felt was going on.

13 Q. All right. Do you recall if he reported to you -- you
14 said that he reported audio hallucinations, correct?

15 A. Yes.

16 Q. Do you recall him saying anything about video (sic)
17 hallucinations?

18 A. No.

19 Q. All right. Did he say anything about spirits?

20 A. Um, I -- there was some note in here that he saw --
21 yeah, that's true, I think he did see some black
22 spirits. Yes, I forgot about that.

23 Q. Okay. All right.

24 A. I think that was while he was in the hospital.

25 Q. All right. And the term that you used, was it uresis?

1 A. Enuresis.

2 Q. Enuresis?

3 A. Uh-huh.

4 Q. That's bedwetting?

5 A. It is.

6 Q. All right. And is that a -- is that a symptom of --
7 can it be a symptom of a mental illness?

8 A. Um, well, we -- we do consider it a treatable mental
9 illness type of problem and --

10 Q. Okay. But that wasn't the primary diagnosis, correct?

11 A. No, no.

12 Q. And at least while he was under your care he was on
13 medication?

14 A. I did start him on medication, yes, I did.

15 Q. All right. And for mental health treatment, correct?

16 A. Yes.

17 Q. All right.

18 A. Uh-huh.

19 MR. RILEY: Could I have a second, please?

20 THE COURT: Yes.

21 Q. (By Mr. Riley) During his hospitalization, did he --
22 did Mr. Jenkins indicate that he was resisting --
23 resistant to being in the hospital? Do you recall?

24 A. No, I didn't hear any complaints about being in the
25 hospital, no.

1 Q. Okay.

2 MR. RILEY: All right. Thank you. That's
3 all I have.

4 THE WITNESS: Okay.

5 THE COURT: Ms. Beadle --

6 MS. BEADLE: Thank you, Your Honor.

7 THE COURT: -- cross-examination?

8 CROSS-EXAMINATION

9 BY MS. BEADLE:

10 Q. Dr. Dahlke, good morning.

11 A. Good morning.

12 Q. He did complain, though, that he wanted to go home and
13 became tearful on a number of occasions, didn't he?

14 A. Um, you know, I didn't -- when I reviewed my notes, I
15 didn't see that specific thing.

16 Q. Do you recall that his mom was going into labor and
17 was about ready to have a baby?

18 A. Yeah, she certainly was.

19 Q. And you saw him, what was it, February 3rd through
20 February 14th of 1995?

21 A. Yes, that's when he was in the hospital.

22 Q. For 11 days?

23 A. Uh-huh.

24 Q. Would you see him on a daily basis? Do you recall?

25 A. Yes.

1 Q. And you have a number of reports that you did with
2 regard to his stay at Methodist Richard Young,
3 correct?

4 A. Right.

5 Q. And your evaluation of him, your initial diagnosis was
6 Axis I oppositional defiant disorder; is that right?

7 A. Yes.

8 Q. And you said consider attention deficit hyperactive
9 disorder?

10 A. Uh-huh.

11 Q. And is it fair to say that at the conclusion of his
12 stay there or at discharge did your Axis I remain the
13 same?

14 A. Um, my -- at discharge it was oppositional defiant
15 disorder, attention deficit hyperactive disorder and
16 functional enuresis.

17 Q. All right. And again, functional enuresis is
18 bedwetting?

19 A. Yes, it is. And it was nocturnal type, yeah.

20 Q. Okay. And when you say "oppositional defiant
21 disorder," that's a behavioral issue, right?

22 A. Yes, very much so.

23 Q. Someone who is defiant and disobedient, correct?

24 A. Yes.

25 Q. Hostile toward authority?

1 A. Yes.

2 Q. Losing temper?

3 A. Uh-huh.

4 Q. Vindictive?

5 A. Yes.

6 Q. And refusing to comply?

7 A. Yes.

8 Q. Would that fairly state what oppositional defiant
9 disorder includes?

10 A. I can read to you all the items on that diagnosis.

11 Q. Okay.

12 A. (As read:) Often loses temper. Often argues with
13 adults. Often actively defies or refuses to comply
14 with adults' requests or rules. Often deliberately
15 annoys people. Often blames others for his or her
16 mistakes or misbehavior. Is often touchy or easily
17 annoyed by others. Is often angry and resentful. Is
18 often spiteful or vindictive. That's the -- that's
19 how you describe that category.

20 Q. And this was a kid who came to you. Everything that
21 you gleaned from him and his family is that it was a
22 very violent home situation; is that fair?

23 A. Yes, it was a violent home situation, yes.

24 Q. Causing the defendant a lot of anxiety?

25 A. Yes.

1 Q. And there was psych testing done to him while he was
2 there?

3 A. Yes, there was.

4 Q. Clinical interviews and a number of other measures; is
5 that fair?

6 A. Yes.

7 Q. And I think that initially you put in a report that
8 initially thought he was hearing voices but later
9 clarified they were actually boys telling him to
10 steal. Do you recall that?

11 A. Um, he did -- he did have some boys in the
12 neighborhood who wanted him to steal, but I do think
13 that he did hear voices telling him to steal.

14 Q. Okay. So with regard to -- I'm just looking at one of
15 the reports that you did and mine are just numbered
16 page 5 so I can't tell you a date because it's not
17 listed on here where there's a clinical interview with
18 four items listed.

19 A. Which --

20 MS. BEADLE: May I approach, Your Honor?

21 THE WITNESS: I've got several different --

22 THE COURT: Yes, you may. You don't have
23 to ask.

24 MS. BEADLE: Thank you.

25 THE WITNESS: -- reports. So I don't know

1 which report you're talking about.

2 MS. BEADLE: (Indicating.)

3 THE WITNESS: I'm wondering if that's the
4 initial -- you don't have the front pages of that, do
5 you?

6 MS. BEADLE: I do.

7 THE WITNESS: Then we can figure out
8 which -- which one it is.

9 MS. BEADLE: Sure. I don't see a date.

10 THE WITNESS: That's on the psychological
11 report. Okay. I've got that right here. And it was
12 on page 5 you're referring to?

13 MS. BEADLE: Yes.

14 THE WITNESS: Okay. I have that page now.

15 Q. (By Ms. Beadle) And I'm just looking under your
16 clinical interview number one.

17 A. It was not my interview, actually.

18 Q. Whose was it?

19 A. I'm not a psychologist. I'm a psychiatrist.

20 Q. So do you rely on this?

21 A. Um, it is an additional piece of information that can
22 be helpful.

23 Q. Okay.

24 A. But I'm not the one who did it. It was Stephanie
25 Koraleski and supervised by Dr. Lehnhoff.

1 Q. All right.

2 THE COURT: How do you spell her last name,
3 Koraleski?

4 THE WITNESS: K O R A L E S K I.

5 THE COURT: Thank you, Doctor.

6 THE WITNESS: Thank you.

7 Q. (By Ms. Beadle) And you, obviously, have a copy of
8 that with you?

9 A. I do.

10 Q. And in that she indicated that a previous report said
11 Nikko heard voices telling him to do bad things --

12 A. Uh-huh.

13 Q. -- but on further inquiry Nikko said these are real
14 voices of the older boys and he only hears them when
15 the boys are with them?

16 A. Uh-huh.

17 Q. There was no evidence of psychosis or auditory
18 hallucinations in this interview?

19 A. That's -- yes, that's what they reported in that
20 interview, yes.

21 Q. And then with regard to number one on that same eval,
22 they talk about the thoughts and dreams that are
23 filled with memories and images of violence in his
24 family?

25 A. Uh-huh.

1 Q. He vividly describes his father beating his mom and
2 said he saved his mom by hitting his father in the
3 head with a brick, right?

4 A. Yes.

5 Q. And he also described a time when his father was
6 pounding on the door trying to break in and his mom
7 shot at his father?

8 A. Yes.

9 Q. Nikko seems very distressed by these thoughts. It's
10 unclear whether his memory of himself saving his mom
11 is accurate but it seems that Nikko believes his mom
12 would have died if he hadn't been present to protect.
13 Is that correct?

14 A. Yes, it is.

15 Q. And, basically, throughout -- throughout that
16 interview, looking at page 6, the last paragraph, they
17 analyzed him: He defends against by blaming others
18 and getting angry. Is that what it says?

19 A. Um, let me just look at that paragraph a second.

20 What you're talking about is that he wanted to
21 see himself -- he is conflicted about himself?

22 Q. Uh-huh.

23 A. He wanted to see himself as a good person. He has
24 mounting evidence from home and from school that he is
25 bad. He uses his feelings as a measure of his

1 goodness or badness, so that if he's corrected and
2 gets disappointed or hurt feelings he
3 over-personalizes it and sees that as evidence that he
4 is bad. He defends against this by blaming others and
5 getting angry, but when he is alone and has time to
6 think and process, he concludes that he is a bad
7 person.

8 Q. Okay. And then at the top of that page under
9 "Summary," the first paragraph --

10 A. Uh-huh.

11 Q. -- they also talk about the overall personality
12 testing and the support of a view of Nikko as a boy
13 who's driven by his anxiety at this point. Is that
14 fair?

15 A. Yes.

16 Q. He thinks and dreams about two particularly violent
17 incidents in his house in his family. Is that right?

18 A. Yes.

19 Q. And throughout, I guess, the gist of all of these
20 records from Richard Young and his stay there, isn't
21 it true that the conclusion is that he's not seeing
22 things, these are actually memories? When he talks
23 about originally his mom saying when she comes in at
24 night and he sounds like he's talking to someone, he
25 admitted to you he's having dreams and these images of

1 his violence in the home?

2 A. Yes, he does, doesn't he?

3 Q. And then the psych assessment, there's a number of
4 pages. And again I'll --

5 A. On the psychological?

6 Q. Well, it isn't the actual interview.

7 MS. BEADLE: If I may approach again?

8 THE COURT: Yes. You don't have to ask.

9 Q. (By Ms. Beadle) I'm not sure what you call this
10 (indicating).

11 A. Oh, these are nursing notes.

12 Q. Okay. Do you also have those or did you rely on
13 those?

14 A. I have those. I have a whole bunch of them. But I
15 didn't really focus on those very closely.

16 Q. Sure.

17 Is the nursing notes something that they would
18 have met with him on a daily basis and documented
19 behaviors?

20 A. Um, yes.

21 Q. All right.

22 A. Nurses would have observed things, yes.

23 Q. And is it a constant theme on, basically, every day
24 that they talk about how he manipulates his mom to get
25 what he wants, the word "manipulating" is used in here

1 a number of times. Is that fair? If you want to
2 review it.

3 A. Yes, I can read that to see what it says.

4 I'm sure that he did use some features of
5 manipulation in order to function in his life.

6 Q. At age eight even?

7 A. Uh-huh. But I think, you know, here's a dream about
8 his dad chasing his mother around the car with a gun.
9 I don't think he's making that up.

10 Q. So, again, that's a real --

11 A. That's a dream.

12 Q. Go ahead.

13 A. You know, you have here he saw something in his sleep
14 and he had a dream about his father chasing his mother
15 around the car with a gun. I think he was very afraid
16 of his father.

17 Q. And it was a dream that he had?

18 A. Well, yes, I think he did have some -- he had
19 nightmares.

20 Q. Yes.

21 A. Yes, he did. I documented that.

22 MS. BEADLE: And that's all I have for
23 you, Doctor. Thank you very much.

24 THE WITNESS: Uh-huh.

25 THE COURT: Redirect?

REDIRECT EXAMINATION

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BY MR. RILEY:

Q. Do you have that psychological, page 6?

A. I do.

Q. Let me make sure we've got the same thing.

A. I'm on the -- yes, I'm on page 6.

Q. Let me see if I've got the same one. Yeah, okay.

A. Um, yes, uh-huh.

Q. So the psychological report that opposing counsel was referring to also includes, in that first paragraph up there -- do you want to read that for a second?

A. Are you talking about under the summary or --

Q. No.

A. Okay. The very -- the very top one?

Q. The very top, yes.

A. Okay.

Q. Just read it to yourself and I'll ask you a question about it.

A. Oh, okay. All right.

Yes, I'm reading that.

Q. Okay. And there's talk about self-concept conflict?

A. Yes.

Q. And you, in your direct testimony, talked about him feeling, you know, grandiose, grandiose ideations?

A. Yeah, grandiosity, yeah, uh-huh.

1 Q. Right.

2 And is this -- well, why don't you summarize for
3 the Court what this means to you as far as how it
4 affects your opinion of his mental state.

5 A. Oh. Um, the fact that he has some features of
6 grandiosity?

7 Q. That and this conflict of power versus fear.

8 A. Um, he was struggling with a difficult conflict in his
9 view about his father and about himself. He sees his
10 father as dangerous to his mother and says that that
11 is bad. On the other hand, he likes his father
12 because he takes me everywhere and buys me anything I
13 want.

14 He sees himself as strong, fast, athletic, smart
15 and sensitive but also says he would die or be hurt
16 for being bad because I took a gun to school and I'm
17 always in trouble, I must be bad.

18 A second self-concept conflict revolves around
19 the issue of power and vulnerability. Nikko likes to
20 see himself as tough and powerful and able to threaten
21 other people and sometimes he acts that way. On the
22 other hand, he also knows that he is scared of getting
23 hurt, that he feels bad when he hurts people, and that
24 he has nightmares and that he wets the bed. It is
25 difficult for him to resolve these conflicts and he

1 even drew a picture of himself as a split face showing
2 two different sides to the world.

3 MR. RILEY: Okay. Thank you. I have no
4 further questions.

5 THE WITNESS: Okay.

6 THE COURT: Ms. Beadle?

7 MS. BEADLE: No, I don't have any further
8 questions.

9 THE COURT: All right.

10 May this witness be excused then, Mr. Riley?

11 MR. RILEY: Yes. Thank you, Doctor.

12 THE WITNESS: Thank you.

13 THE COURT: All right. Doctor, thank you
14 very much. Watch your step going down.

15 THE WITNESS: Oh, thank you. We don't need
16 any injuries, huh?

17 THE COURT: People always fall here.

18 THE WITNESS: Okay.

19 THE COURT: There's a second step.

20 THE WITNESS: Thank you very much.

21 THE COURT: Thank you, Doctor.

22 MR. RILEY: Judge, the only other witness
23 that we intend to call is Dr. Baker.

24 THE COURT: As rebuttal?

25 MR. RILEY: Yes, as rebuttal, and it's



P

Dan Jenkins <djenkins@leg.ne.gov>

Restrictive Housing Request

Beaty, Jeffry <jeffry.beaty@nebraska.gov>
To: Dan Jenkins <djenkins@leg.ne.gov>

Wed, Nov 19, 2014 at 2:34 PM

Dan,

NSP provided the following info:

Housing Unit #4/Restrictive Housing: 80 square feet/10' x 8'

Control Unit/Restrictive Housing: 63 square feet/9' x 7'

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

From: Dan Jenkins

Date: 11/18/2014 10:45 AM (GMT-08:00)

To: "Beaty, Jeffry"

Subject: Re: Restrictive Housing Request

Hi Jeff,

I was just wondering when I might be able to expect these numbers?

Thank you!

- Dan

On Thu, Nov 13, 2014 at 11:10 AM, Dan Jenkins <djenkins@leg.ne.gov> wrote:

Thank you!

On Thu, Nov 13, 2014 at 11:10 AM, Beaty, Jeffry <jeffry.beaty@nebraska.gov> wrote:

Sure Dan, we can get that information for you.

Jeffry Beaty

Planning, Research and Accreditation Director

Nebraska Department of Correctional Services

P.O. Box 94661

Lincoln, NE 65809

Work: 402-479-5767

protesting and refusal to work).¹ Additionally, DCS has no written guidelines for applying these terms.

Finding #2: The terms “serious” and “flagrant,” which describe the severity of misconduct that warrants disciplinary segregation or loss of good time, are not defined in statute. The Department of Correctional Services has no written guidelines for the types of behavior to which they should be applied.

There are two ways an inmate may accumulate good time: (1) an inmate’s sentence is automatically reduced by six months for every year of his/her term and (2) an inmate may earn good time at the rate of three days per month after completion of the first year of incarceration, so long as the inmate maintains a certain standard of good behavior.² The department can take away automatic good time, but not earned good time.

Additionally, in some instances, good time may be restored to an inmate who has: (1) no Class I offenses for the past year, (2) no IDC misconduct reports for the past six months, and (3) no more than two UDC misconduct reports for the past six months. Good time is restored at the rate of up to 30 days for every continuous 30 day period that the inmate maintains a clear record, unless the warden recommends times exceeding 30 days, which must be approved by the DCS Director. Good time may not be restored if the IDC has designated it as non-restorable.

Solitary Confinement and Segregation

DCS distinguishes between the terms “solitary confinement” and “segregation.” Solitary confinement, as it is defined in DCS regulations, deprives an inmate of any audio and visual contact with other inmates or staff. In contrast, inmates in different types of segregation are housed in a gallery of separate cells where they can have some interaction with other inmates and staff, although in some types of segregation, inmates can be confined to their cell for as much as 22 or 23 hours per day.

¹ *McConnell v. Wolff*, 342 F.Supp. 616 (D. Neb. 1972).

² The inmate must not have been convicted of a Class I or Class II offense of more than three Class III offenses as defined by the DCS Code of Offenses. Neb. Rev. Stat. § 83-1,107(2)(b).

3

	ADMINISTRATIVE REGULATION Department of Correctional Services State of Nebraska	NUMBER 210.01	Page 1 of 16
		CONDITIONS of SEGREGATED CONFINEMENT	

This Administrative Regulation is to be made available in law libraries or other inmate resource centers.

- EFFECTIVE: March 1, 1980
- REVISED: December 30, 2004
- REVISED: June 29, 2005
- REVISED: July 7, 2006
- REVISED: July 6, 2007
- REVISED: June 16, 2008
- REVISED: June 24, 2009
- REVISED: June 29, 2010
- REVISED: June 29, 2011
- REVISED: August 10, 2012
- REVISED: July 19, 2013

SUMMARY of REVISION/REVIEW

Revised wording in paragraph III.O. relative to Court Imposed Segregation with no change to policy intent. Clarify reference to Correctional staff in paragraph IV.P. Change "can" to "may" in paragraph IV.S. Revise first line of paragraph XII. and paragraph XII.B.1. to reflect policy revision that all Immediate Segregation placements – including those pending classification to protective custody – shall participate in the Segregation Levels Program. Add paragraph XII.I.10. to allow additional levels to be established upon approval by the Deputy Director, Institutions. Revise title of paragraph XIII. A.

APPROVED.



ROBERT P. HOUSTON, Director
 Nebraska Department of Correctional Services

	ADMINISTRATIVE REGULATION Department of Correctional Services State of Nebraska	NUMBER 210.01	Page 2 of 16
		CONDITIONS of SEGREGATED CONFINEMENT	

PURPOSE

The proper handling of special management inmates is essential to maintaining a safe, secure and humane environment for inmates, staff and the public. This policy establishes guidelines for the conditions of confinement for special management inmates.

- I. Each institution shall formulate policies and procedures consistent with this Administrative Regulation to cover the conditions of confinement for special management inmates. The policies and procedures shall be consistent with the institution's function and the nature of its inmate population and programs.
- II. "Special Management Inmates" include, but are not limited to, inmates whose activities and privileges have been suspended or limited because they are in one or more of the following classifications:
 - A. Disciplinary Segregation (DS)
 - B. Death Row (DR)
 - C. Court Imposed Segregation (CI)
 - D. Immediate Segregation (IS)
 - E. Administrative Segregation (AS) which includes:
 - 1. Administrative Confinement (AC)
 - 2. Protective Custody (PC)
 - 3. Intensive Management (IM)
 - 4. Transition Confinement (TC)
- III. Services and Programs - Special management inmates in segregation because of their classification as a special management inmate shall receive the following services and programs unless documented security and safety considerations dictate otherwise.
 - A. Prescribed medication and access to health care by a qualified health care official.
 - B. Clothing that is not degrading.
 - C. Access to authorized personal items for use in their cells.
 - D. Substantially the same meals served to the general population.
 - E. The opportunity to shave and shower at least three (3) times per week.
 - F. The issue and exchange of clothing, bedding and linen on the same basis as inmates in the general inmate population.
 - G. Access to laundry services on the same basis as inmates in the general inmate population.

	<p style="text-align: center;">ADMINISTRATIVE REGULATION</p> <p style="text-align: center;">Department of Correctional Services State of Nebraska</p>	<p style="text-align: center;">NUMBER</p> <p style="text-align: center;">210.01</p>	<p style="text-align: center;">Page</p> <p style="text-align: center;">3 of 16</p>
		<p>CONDITIONS of SEGREGATED CONFINEMENT</p>	

- H. Access to hair care services on substantially the same basis as inmates in the general inmate population.
 - I. The same opportunity to write and receive letters as is available to the general inmate population.
 - J. Opportunities to visit.
 - K. Telephone privileges as defined in A.R. 205.03, *Inmate Telephone Regulations*.
 - L. Access to legal materials.
 - M. Access to reading materials.
 - N. A minimum of one (1) hour per day, five (5) days per week, of exercise outside their cells.
 - O. It is in the best interest of all to provide Special Management inmates with resources that will enable them to be better citizens within the institution and upon their return to society. Special Management inmates assigned to segregated confinement, including those inmates on disciplinary segregation for more than 60 days, shall have access to programs and services that include, but are not limited to educational services, canteen services, library services, social services, counseling services, religious guidance, and recreational programs. Inmates serving court imposed segregation are usually confined in segregation no more than 48 hours and have only a temporary interruption of programs or services, which resume upon return to general population.
- IV. Conditions of Segregated Confinement - The conditions of confinement for special management inmates in segregation are set forth below. The Director/designee must approve any deviations from these requirements.

Inmates in Transition Confinement status will have the same conditions of confinement as inmates on Administrative Confinement. These conditions may be adjusted by individual transition confinement programs.

	ADMINISTRATIVE REGULATION Department of Correctional Services State of Nebraska	NUMBER 210.01	Page 4 of 16
		CONDITIONS of SEGREGATED CONFINEMENT	

CONDITIONS OF CONFINEMENT		APPLICATIONS						
		IS	AC	PC	IM	DS	DR	CI
A. PRESCRIBED MEDICATION								
	Inmates shall receive prescription medications.	X	X	X	X	X	X	X
B. CLOTHING								
	Inmates shall receive state-issued clothing that is not degrading.	X	X	X	X	X	X	X
C. PERSONAL PROPERTY								
	Inmates shall have access to authorized personal items for use in their cells.	X	X	X	X	X	X	X
D. MEALS								
	Inmates shall receive substantially the same meals served to the general population.	X	X	X	X	X	X	X
	Inmates shall receive meals in their cells.	X	X		X	X		X
	Inmates may be permitted to receive meals outside their cells if proper security can be maintained.			X			X	
E. SHOWERS AND SHAVING								
	Inmates shall have the opportunity to shave and shower one time per day.						X	
	Inmates shall have the opportunity to shave and shower one time on each weekday (Monday through Friday).			X				

	ADMINISTRATIVE REGULATION Department of Correctional Services State of Nebraska	NUMBER 210.01	Page 8 of 16
		CONDITIONS of SEGREGATED CONFINEMENT	

CONDITIONS OF CONFINEMENT		APPLICATIONS						
		IS	AC	PC	IM	DS	DR	CI
S. RADIO/TELEVISION PRIVILEGES								
	Inmates may use personal radio and television sets with headsets or earphones in accordance with the Administrative Segregation Levels Program (if applicable).	X	X	X	X	X	X	X
T. USE OF RESTRAINTS - INTERNAL MOVEMENT								
	Inmates may be restrained for internal movement and proper management.	X	X	X	X	X	X	X
U. ACCESS TO HEALTH CARE								
	Inmates shall have access to health care by health care officials on a daily basis, unless medical attention is required more frequently.	X	X	X	X	X	X	X
V. WORK ASSIGNMENTS								
	Inmates may be allowed to have work assignments.		X	X		X	X	

	ADMINISTRATIVE REGULATION Department of Correctional Services State of Nebraska	NUMBER 210.01	Page 9 of 16
		CONDITIONS of SEGREGATED CONFINEMENT	

- V. General Provisions Regarding Limitations on Services and Programs for Special Management Inmates in Segregation.
 - A. Exceptions to the services and programs for special management inmates in segregation must be made by the shift supervisor or the unit manager/designated staff and be based on a finding that the exceptions are necessary for the safety and security of the inmate, other inmates, staff or the unit.
 - B. The segregation unit staff shall record the exception and the reason for the exception in the permanent unit log.
 - C. When an inmate in segregation is deprived of any right or privilege, the segregation unit staff shall prepare a written report. This report shall be sent to the Security Administrator of the facility and shall be kept in the inmate's institutional file.

- VI. Provisions and Limitations on Showers and Exercise
 - A. Except in emergencies, the Director or designee will not curtail shower and exercise periods to fewer than three times per week for special management inmates in segregation.
 - B. Exceptions shall be granted for a definite time period and shall be in response to institution or unit special needs and contingencies.
 - C. In facilities where segregation exercise yards exist outside and where cover is not provided to mitigate the inclement weather, appropriate weather-related equipment and attire should be made available to the inmates who want to take advantage of their authorized exercise time.

- VII. Refusal to Shower or Exercise
 - A. The refusal to shower and exercise shall be documented in the unit's permanent log.
 - B. An inmate will be deemed to have refused to shower or exercise by not complying with security procedures, or threatening actions that present an immediate danger to the safety of staff or other inmates.
 - C. After consultation with the medical department, the inmate may be required to shower.

- VIII. Non-Contact Visitation Provisions
 - A. Visiting schedules for inmates designated for non-contact visits shall be on an appointment basis according to the visiting schedule authorized by the Warden.
 - B. Non-contact visits shall not last longer than one hour per visit.
 - C. The Shift Supervisor may alter the visitation time and number of visitors to insure proper order and security.

- IX. Medical or Health Care

	<p align="center">ADMINISTRATIVE REGULATION</p> <p align="center">Department of Correctional Services State of Nebraska</p>	<p align="center">NUMBER</p> <p align="center">210.01</p>	<p align="center">Page</p> <p align="center">10 of 16</p>
		<p align="center">CONDITIONS of SEGREGATED CONFINEMENT</p>	

- A. All medical or health care visits shall be recorded in the inmate's health record and in the unit's permanent log.
- B. An inmate's refusal of medical care shall be documented in the inmate health record and in the unit's permanent log.
- X. **Alternative Meal Service.**
 - A. Alternative meal service may be ordered for a special management inmate in segregation who uses food or food service equipment in a manner that is hazardous to self, staff or other inmates.
 - B. Alternative meal service must meet the inmate's basic nutritional requirements.
 - C. The Warden of the facility must approve alternative meal service in writing.
 - D. Alternative meal service cannot last for more than twenty-one (21) consecutive meals.
- XI. **Management of the Segregation Unit**
 - A. A shift supervisor shall visit the segregation unit(s) at least once every day.
 - B. Program staff members shall visit the segregation unit(s) upon request.
 - C. A qualified health care official shall visit the segregation unit at least once every day.
 - D. Each facility shall establish policies on the selection criteria, supervision and rotation of the staff members who work on a regular and daily contact basis with inmates in the segregation unit(s).
 - E. In facilities with small, short-term segregation units and no specified segregation posts, designated unit and custody staff will receive special training prior to providing coverage in the unit.
 - F. A qualified mental health professional shall conduct a personal interview of any special management inmate in segregation for more than 30 days and prepare a written report. If segregation continues for an extended period, a mental health assessment of the special management inmate must be done at least every three (3) months.
- XII. **Segregation Levels Program**

All special management inmates, other than those listed below.

 - A. Inmates upon their placement in a segregation unit shall be given information regarding the program (Attachment A).
 - B. The three categories of levels of the Segregation Levels Program are:
 - 1. Level 1 (Orientation) - All inmates entering segregation will begin at Level 1.

	ADMINISTRATIVE REGULATION Department of Correctional Services State of Nebraska	NUMBER 210.01	Page 11 of 16
		CONDITIONS of SEGREGATED CONFINEMENT	

2. D Segregation Levels - These levels apply to all inmates on immediate segregation after completion of Level 1 and to inmates on disciplinary segregation. Inmates on immediate segregation can be promoted to Level 2D and Level 3D. Inmates on immediate segregation cannot be promoted beyond Level 3D. Inmates on disciplinary segregation can move from Level 2D through Level 6 D.
 3. A Segregation Levels - These levels apply to all inmates on intensive management or administrative confinement. Inmates on intensive management can be promoted from Level 2A through 4A. Inmates on administrative confinement can be promoted from Level 2A through Level 7A.
 4. Inmates who complete a period of disciplinary segregation and are then classified to intensive management or administrative confinement shall be placed on Level 2A if they have progressed from Level 1 - Orientation.
 5. If an inmate on intensive management or administrative confinement receives disciplinary segregation, the inmate must return to Level 1 - Orientation.
 6. If an inmate is removed from transition confinement but does not receive any disciplinary segregation the inmate may begin the Segregation Levels Program at Level 2A.
 7. If an inmate is removed from transition confinement and a misconduct report is pending, the inmate shall be placed on Level 1 - Orientation.
- C. The same Segregation Levels Program shall be used in all segregation units; participant behavior shall be documented on a Levels Behavior Baseline (Attachment B).
- D. A committee comprised of segregation unit staff and mental health practitioners shall administer the Segregation Levels Program. Within the time limits established by the Segregation Levels Program, this committee shall decide when an inmate should be promoted or demoted within the levels or remain at the current level. These decisions shall be based upon the inmate's behavior. The inmate will be notified of the decision.
- E. The inmate has seven days to appeal the committee's decision to the facility's Warden. During the appeal, the committee's decision will be in effect. The Warden's decision is final.
- F. **General Provisions - Segregation Levels Program**
1. **Property** - All inmates subject to the Segregation Levels Program are authorized to possess the following property. This property may be kept in storage until needed.
 - a. One state-issued sweatshirt.
 - b. One state-issued stocking cap.
 - c. One pair of state-issued pants.

	ADMINISTRATIVE REGULATION Department of Correctional Services State of Nebraska	NUMBER 210.01	Page 12 of 16
		CONDITIONS of SEGREGATED CONFINEMENT	

- d. One state-issued shirt.
- e. One set of state-issued underwear.
- f. One pair of state-issued socks.
- g. One pair of state-issued boots.
- h. One pair of state-issued tennis shoes.
- i. One pair of shower shoes.
- j. One state-issued coat (winter only).
- k. One pair of state-issued Jersey gloves (winter only).
- l. One pair of prescription glasses and one glasses case.
- m. One wedding ring.
- n. One religious necklace/medallion.
- o. One religious book.
- p. One address book.
- q. One inmate rule book.
- r. One telephone list.
- s. Legal papers consistent with property restrictions for special management inmates.
- t. One pen.
- u. One pad of paper.
- v. Stamped envelopes (in quantity permitted by institutional procedure).

2. Canteen Purchases - All inmates subject to the Segregation Levels Program may purchase legal materials (pens, paper, stamped envelopes) from the canteen.

G. Level 1 - Orientation

- 1. Inmates subject to the Segregation Levels Program shall begin at Level 1 - Orientation.
- 2. An inmate shall remain on Level 1 - Orientation for a minimum of 7 days.
- 3. Promotion from Level 1 - Orientation after 7 days will be determined by the committee based on the inmate's behavior.
- 4. Inmates at Level 1 - Orientation shall be issued a hygiene kit.
- 5. When an inmate's behavior warrants removal from Level 1 - Orientation, the inmate shall be:
 - a. Promoted to Level 2D, if the inmate remains on immediate segregation.
 - b. Promoted to Level 2D, if the inmate has been placed on disciplinary segregation.
 - c. Promoted to Level 2A, if the inmate has been classified to intensive management or administrative segregation.

H. Levels 2D through 6D.

	ADMINISTRATIVE REGULATION Department of Correctional Services State of Nebraska	NUMBER 210.01	Page 13 of 16
		CONDITIONS of SEGREGATED CONFINEMENT	

1. Inmates on immediate segregation after being promoted from Level 1-Orientation can advance to Level 3D.
2. Inmates on disciplinary segregation can be promoted through Level 6D.
3. Inmates on Levels 2D through 6D can purchase hygiene products from the canteen.
4. Level 2D
 - a. Inmates on Level 2D may possess one pair of headphones/earbuds in addition to the property authorized for inmates on Level 1 - Orientation.
 - b. Inmates shall remain on Level 2D for a minimum of 2 weeks before they can be promoted to Level 3D.
5. Level 3D
 - a. Inmates on Level 3D may possess one hair brush and one drinking cup in addition to the property authorized for inmates on Level 2D
 - b. Inmates shall remain on Level 3D for a minimum of 3 weeks before they can be promoted to Level 4D.
6. Level 4D
 - a. Inmates on Level 4D may possess one wristwatch in addition to the property authorized for inmates on Level 3. If the inmate does not have a wristwatch in his/her property, the inmate is authorized to purchase a wristwatch from the canteen.
 - b. Inmates on Level 4D are authorized to make one personal telephone call per week.
 - c. Inmates shall remain on Level 4D for a minimum of 4 weeks before they can be promoted to Level 5D.
7. Level 5D
 - a. Inmates on Level 5D are authorized to possess a television or radio in addition to the property authorized for inmates on Level 4D. If the inmate does not own a television or radio, the inmate is authorized to purchase a television or radio from the Canteen.
 - b. Inmates shall remain on Level 5D for a minimum of 6 weeks before they can be promoted to Level 6D.
8. Level 6D
 - a. Inmates on Level 6D are authorized to possess all property authorized for Level 5D.

	ADMINISTRATIVE REGULATION Department of Correctional Services State of Nebraska	NUMBER 210.01	Page 14 of 16
		CONDITIONS of SEGREGATED CONFINEMENT	

- b. Inmates on Level 6D may purchase up to \$10.00 in non-hygiene items from the canteen.
 - c. Inmates on Level 6D may apply for reductions of their disciplinary segregation time.
- I. Levels 2A through 7A.
- 1. Inmates on intensive management can be promoted through Level 4A.
 - 2. Inmates on administrative confinement can be promoted through Level 7A.
 - 3. Inmates on Levels 2A through 7A can purchase hygiene products from the canteen.
 - 4. Level 2A
 - a. Inmates on Level 2A may possess one pair of headphones/earbuds, one television/radio, one drinking cup and one hair brush in addition to the property authorized for inmates on Level 1 - Orientation.
 - b. Inmates on Level 2A may purchase up to \$10.00 in non-hygiene items from the canteen.
 - c. Inmates shall remain on Level 2A for a minimum of 4 weeks before they can be promoted to Level 3A.
 - 5. Level 3A
 - a. Inmates on Level 3A may possess one wristwatch in addition to the property authorized for inmates on Level 2A. If the inmate does not have a wristwatch in his/her property, the inmate is authorized to purchase a wristwatch from the canteen.
 - b. Inmates on Level 3A may purchase up to \$10.00 in non-hygiene items from the canteen.
 - c. Inmates on Level 3A may make one additional phone call per week.
 - d. Inmates on Level 3A may clean their cell one additional time per week.
 - e. Inmates shall remain on Level 3A for a minimum of 4 weeks before they can be promoted to Level 4A.
 - 6. Level 4A
 - a. Inmates on Level 4A may purchase up to \$15.00 in non-hygiene items per week.

	ADMINISTRATIVE REGULATION Department of Correctional Services State of Nebraska	NUMBER 210.01	Page 15 of 16
		CONDITIONS of SEGREGATED CONFINEMENT	

- b. Where available Inmates on Level 4A may have input in selecting a radio station.
- c. Inmates on Level 4A may have one additional shower per week.
- d. Inmates on Level 4A may have one extra yard session.
- e. Inmate shall remain on Level 4A for a minimum of 6 weeks before they can be promoted to Level 5A.

7. Level 5A

- a. Inmates on Level 5A may purchase up to \$15.00 in non-hygiene items per week.
- b. Inmates on Level 5A may have one extra visit per month.
- c. Inmates on Level 5A may get a hobby card for approved art supplies.
- d. Inmates on Level 5A may have a job assignment in the unit (if available).
- e. Inmates shall remain on Level 5A for a minimum of 6 weeks before they can be promoted to Level 6A.

8. Level 6A

- a. Inmates on Level 6A may purchase up to \$20.00 in non-hygiene items from the canteen.
- b. Inmates on Level 6A may participate in one approved activity in their cell such as fantasy football.
- c. Inmates on Level 6A may request to move to a different cell.
- d. Inmates shall remain on Level 6A for a minimum of 8 weeks before they can be promoted to Level 7A.

9. Level 7A

- a. Inmates on Level 7A may purchase up to \$25.00 in non-hygiene items from the canteen.
- b. Inmates on Level 7A may have one self-determined incentive approved by the committee. Self-determined incentives are not cumulative.

- 10. Additional Levels may be established with the approval of the Deputy Director, Institutions based on the individual facility's ability to provide for other identified incentives.

XIII. Segregation Early Release

	ADMINISTRATIVE REGULATION Department of Correctional Services State of Nebraska	NUMBER 210.01	Page 16 of 16
		CONDITIONS of SEGREGATED CONFINEMENT	

A. Due to Crowding

Crowding in segregation may necessitate the early release of inmates. In such cases, the Warden/designee shall determine which inmates will be released by giving priority to those inmates who have shorter sentences imposed for nonviolent infractions and who have served a substantial portion of such sentences.

B. Reduction in Disciplinary Segregation Time

When deemed appropriate in cases involving long-term segregation inmates, the Warden/designee may recommend to the Director that disciplinary segregation time is reduced.

REFERENCE

I. ATTACHMENTS

- A. Segregation Levels Handout
- B. Baseline

II. ACA STANDARDS – Standards for Adult Correctional Institutions (ACI) (4th edition): 4-4155, 4-4249, 4-4255, 4-4256, 4-4258, 4-4259, 4-4260, 4-4261, 4-4262, 4-4263, 4-4265, 4-4266, 4-4267, 4-4268, 4-4269, 4-4270, 4-4273, 4-4320 and 4-4435.

4, 7, 9, 10

Testimony of Rick Raemisch
Executive Director of the Colorado Department of Corrections
"Reassessing Solitary Confinement II: The Human Rights, Fiscal,
and Public Safety Consequences"

February 25, 2014

Administrative Segregation: A Story without an End

Chairman Durbin, Ranking Member Cruz, and members of the Subcommittee:

I am Rick Raemisch, Executive Director of the Colorado Department of Corrections. I was appointed to this position following the murder of the Department's former Executive Director on March 19th of last year. Tom Clements, as many of you know, was murdered answering the door of his home by a recent parolee who had been released directly into the community from Administrative Segregation.

I am honored to appear before the Subcommittee, and I look forward to talking to you about Administrative Segregation and what we are doing in Colorado to prevent such tragedies from ever happening again.

My career in law enforcement began in 1976 when I became Deputy Sheriff in Dane County, Wisconsin. During the three decades that followed, I served the citizens of my home state as Deputy; Undercover Narcotics Detective; elected Sheriff; Assistant District Attorney; Assistant U.S. Attorney; Administrator of Probation and Parole, Wisconsin Department of Corrections; Deputy Secretary, Wisconsin Department of Corrections; and Secretary, Wisconsin Department of Corrections.

My experiences in law enforcement have led me to the conclusion that Administrative Segregation has been overused, misused, and abused for over 100 years. "The Steel Door Solution" of segregation, as I call it, either suspends the problem or multiplies it, but definitely does not solve it. If our goal is to decrease the number of victims inside prison, and outside prison, like Tom Clements, then we must rethink how we use Administrative Segregation, especially when it comes to the mentally ill. This is a goal I pursued in Wisconsin and now am pursuing in Colorado.

While head of the Wisconsin Department of Corrections (DOC), I was accountable for more than 22,000 inmates, 73,000 individuals on probation or parole, and approximately 1,000 juveniles. During my three and a half years leading the Department, we made tremendous strides in reducing the number of offenders in Administrative Segregation and removing those with mental illness so they could receive treatment.

I was in Wisconsin when I heard of Tom Clements' murder. After the initial shock, I became angry someone had the audacity to take the life of someone who was working hard to improve the quality of life for inmates while also protecting the public. I applied

for the position, and was appointed Executive Director by Governor John Hickenlooper, who wanted me to continue Mr. Clements' vision. For me, it was an opportunity to bring to Colorado what I had started in Wisconsin. Moreover, it was an opportunity for me to channel my anger about Mr. Clements' death into developing and implementing a plan that focuses on using segregation only for those who really need it, making sure those offenders who are released from solitary do not cause more harm, and making sure segregation does not make people more violent.

My belief was, and still is, that it's impossible to hold an offender with an unstable serious mental illness accountable for violating the prison's rules, if the offender doesn't understand the rules he is supposed to be playing by. So expecting a mentally ill inmate who is housed in Administrative Segregation long-term and without treatment to follow the rules is pointless. It's my conviction that long-term segregation creates or exacerbates mental illness. I try to visit institutions at least once a week to talk with staff and inmates including some who are in Administrative Segregation. Often times, the mental illness was apparent. Sometimes inmates were so low-functioning they could not meaningfully function or communicate.

During my time in Wisconsin, I developed many of the philosophies and practices that we are successfully incorporating at the Colorado DOC. Some of this work had already begun under the direction of former Executive Director Tom Clements.

Since leading the CDOC, I've worked with my Executive Team to develop a workable action plan to reduce the use of Administrative Segregation. We are reducing the number of offenders in Administrative Segregation by assessing each case individually. We have made reductions among those with a serious mental illness, those who are released directly from Administrative Segregation into the community, and all other persons in Administrative Segregation.

Along with my Executive Team, I am focusing on allowing the use of Administrative Segregation only for those who truly are a danger to others or themselves. But just because an offender needs to be in Administrative Segregation for safety reasons, that doesn't mean they should sit in a windowless, tiny cell for 23 hours a day. There are other solutions. There are other options.

In Colorado, our goal is to get the number of offenders in Administrative Segregation as close to zero as possible, with the exception of that small number for whom there are no other alternatives. We have put in place an action plan that I believe will get us to that goal by the end of this year. This action plan consists of:

- focusing the use of Administrative Segregation on truly violent offenders who pose an immediate danger to others or themselves;
- not releasing an offender into the community directly from Administrative Segregation;

- removing levels of Restrictive Housing (housing will be driven by incentives);
- developing a Sanction Matrix for violent acts, which will result in placement in Administrative Segregation;
- ending indeterminate lengths of Administrative Segregation placement;
- reviewing the cases of offenders currently housed in Administrative Segregation for longer than 12 months;
- establishing a "Management Control Unit" where offenders have 4 hours a day out of their cells in small groups;
- establishing a "Transition Unit" with a cognitive course to prepare offenders for transition to General Population; and
- redefining the housing assignments with incentives for Death Row offenders. These offenders will no longer be classified as Administrative Segregation cases and will have opportunities to leave their cells 4 hours a day together.

While the goal is to decrease the number of offenders housed in Administrative Segregation, there will always be a need for a prison within a prison. Some offenders will need to be isolated to provide a secure environment for both staff and offenders, but they should not be locked away and forgotten.

Administrative Segregation cannot be a story without an end for offenders. While I continue to believe that offenders who are violent should remain in Administrative Segregation until they can demonstrate good behavior, there must be a defined plan. Offenders, if they are to meet expectations, must know what those expectations are; to succeed, they must know what success looks like. When individuals enter the prison system they know the length of their sentence. The same philosophy should apply to those entering an Administrative Segregation cell.

Since putting the first stage of the Department's action plan into effect in December, we are seeing successes. In these few months, the number of serious mentally ill housed in Administrative Segregation has been reduced to one offender. These offenders removed from Administrative Segregation are receiving treatment in Residential Treatment Programs outside of the containment of Administrative Segregation.

As a result of recent changes, the Colorado Department of Corrections has seen a reduction in the Administrative Segregation population from 1,451 in January 2011 to 597 in January 2014. That is a reduction of nearly 60 percent. Because Colorado's total adult offender incarcerated population is currently 17,574, this means the Colorado DOC Administrative Segregation population is currently just 3.4%, down from a peak of 1,505 or 6.8% in August of 2011. As a result of these reductions, we did not see an immediate increase in assaults. We believe as we track this further, our institutions will actually be safer.

Of course, there is no question that Administrative Segregation is more expensive. The cost of housing an offender in Administrative Segregation is \$45,311 a year, compared to the \$29,979 a year it costs to house an offender in general population. Therefore, each offender that is housed in the general population and not Administrative Segregation saves the state \$15,332 annually per offender.

I am data driven. And if what you care about is victims and the community, you must do what works. What I want is fewer victims. Each person we turn around who was in Administrative Segregation means fewer victims of crime and violence. Ninety-seven percent of all offenders will eventually go back to their communities. Releasing offenders directly from Administrative Segregation into the community is a recipe for disaster. Our job is to effectively prepare each of them for successful re-entry, not to return them to the community worse than before their time in prison. In Colorado, in 2012, 140 people were released into the public from Administrative Segregation; last year, 70; so far in 2014, two.

This is a message I deliver directly to my wardens. I say to them: "Who wants to live directly next to someone who was just released from solitary confinement? Think about how dangerous that is." I also encourage my staff to spend some time in segregation so that they understand the experience. I have done that myself, and the experience was eye-opening.

The current reliance on Administrative Segregation is not a Colorado problem. It's not even only a national problem. The use of Administrative Segregation is an international problem and it will take many of us to solve it. I believe reform requires the cooperation of corrections leadership, corrections staff, legislators, stakeholders and the community. But I do see change. I see an evolution that will better serve our citizens and make our communities safer.

Thank you for the opportunity to appear before this Subcommittee.

5

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

LR424
August 08, 2014

in administrative confinement. [LR424]

SENATOR LATHROP: How long does that last? [LR424]

ROBERT HOUSTON: It's reviewed. It was reviewed every six months and I reduced that to four months. [LR424]

SENATOR LATHROP: So if they get involved in an assault, you'd put them in there for four months and then look at it and see if they're behaving or generally compliant with what's going on in their environment? [LR424]

ROBERT HOUSTON: They'd probably go down there...if there was a fight, for example, we don't know if that's in a fight or an assault, so they would go down there on immediate segregation and they'd be confined there while we do the investigation. And then at the end of the investigation a determination would be made whether or not to administratively place them, and then that decision would be reviewed every four months. [LR424]

SENATOR LATHROP: You told us at the beginning of your testimony that you're on a panel that deals with this very subject,... [LR424]

ROBERT HOUSTON: Yes. [LR424]

SENATOR LATHROP: ...restrictive housing. [LR424]

ROBERT HOUSTON: Yes. [LR424]

SENATOR LATHROP: And you also said that the panel you're on recognizes some mental health consequences from restrictive housing. [LR424]

Home



In This Section

Accounting

Adult Parole Administration

Budget

Emergency Preparedness

Engineering

Grants

Health Services

Human Resources

Information Systems

Inmate Records

Legal Division

Organizational Development

Staff Training Academy

Planning, Research & Accreditation

Purchasing

Safety & Sanitation

Special Services

ADA Information

Alternate Sections

Programs

Families & Friends

Public Interest

Administration

Mission Statement

The mission of the Department of Correctional Services is to serve and protect the public by providing control, humane care and program opportunities for those individuals placed in its custody and supervision, thereby facilitating their return to society as responsible persons.

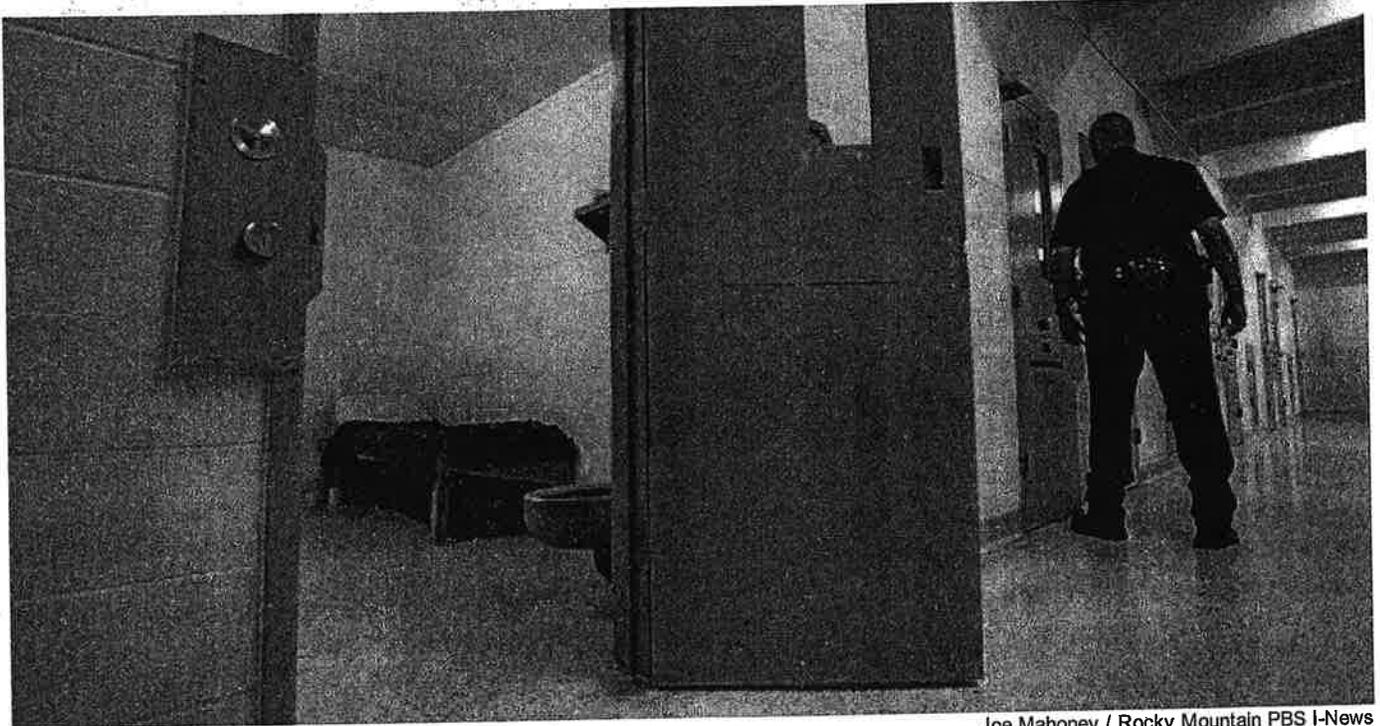
Executive Staff



Rocky Mountain PBS I-News (<https://i.newsnetwork.org/2014/06/06/hickenlooper-signs-ban-on-long-term-solitary-for-mentally-ill-prisoners/>)

Hickenlooper Signs Ban on Long-Term Solitary for Mentally Ill Prisoners

By: **KRISTIN JONES** | June 6, 2014



Joe Mahoney / Rocky Mountain PBS I-News

A sheriff's deputy checks on prisoners in Unit 4C of the Pueblo County, Colo., jail on April 4, 2014. Inmates with mental illnesses are often placed under administrative segregation in 4C and other parts of the jail where they are kept isolated in their cells for 23 hours a day and their only human contact is with the guards.

Gov. John Hickenlooper this morning signed a bill that bans the practice of keeping seriously mentally ill prisoners in solitary confinement.

The bill, which passed with strong bi-partisan support, won the support of advocates and rights groups like the American Civil Liberties Union, who say the isolation of prisoners with mental illness violates the constitution's ban on cruel and unusual punishment and endangers public safety.

But as Rocky Mountain PBS I-News has reported (<http://i.newsnetwork.org/2014/05/11/untreated-jails-are-new-mental-health-treatment-centers/>), state prisons aren't the only place in Colorado where offenders with mental illness are subject to lengthy periods of solitary confinement. In the state's county jails, solitary confinement - or administrative segregation - remains common for inmates with serious mental illness. The isolation can last days, months, or even years.

In jails, this practice is left intact by the latest state law.

The new legislation came on the heels of a series of tragedies in Colorado, including the killing last year of prisons chief Tom Clements by a man who had been released directly from long-term solitary confinement into the community. In an irony often noted, Clements had worked to reduce the use of administrative segregation in state prisons.

The current corrections chief, Rick Raemisch, has continued the work that his predecessor started, publicly calling for a rethinking of the practice of solitary confinement (<http://www.nytimes.com/2014/02/21/opinion/my-night-in-solitary.html>) in general, and pledging to remove seriously mentally ill inmates from isolation in the state prisons.

His concerns were echoed by Colorado legislators who worried about the damaging effects of solitary confinement on mental health, and the risks to the public from prisoners who will someday be released.

The law now etches some of Raemisch's policies in stone, and adds funding and a level of oversight. Prisoners with mental illness won't be kept in confinement for longer than 30 days, and will be guaranteed a period of therapeutic activity and out-of-cell time each week.

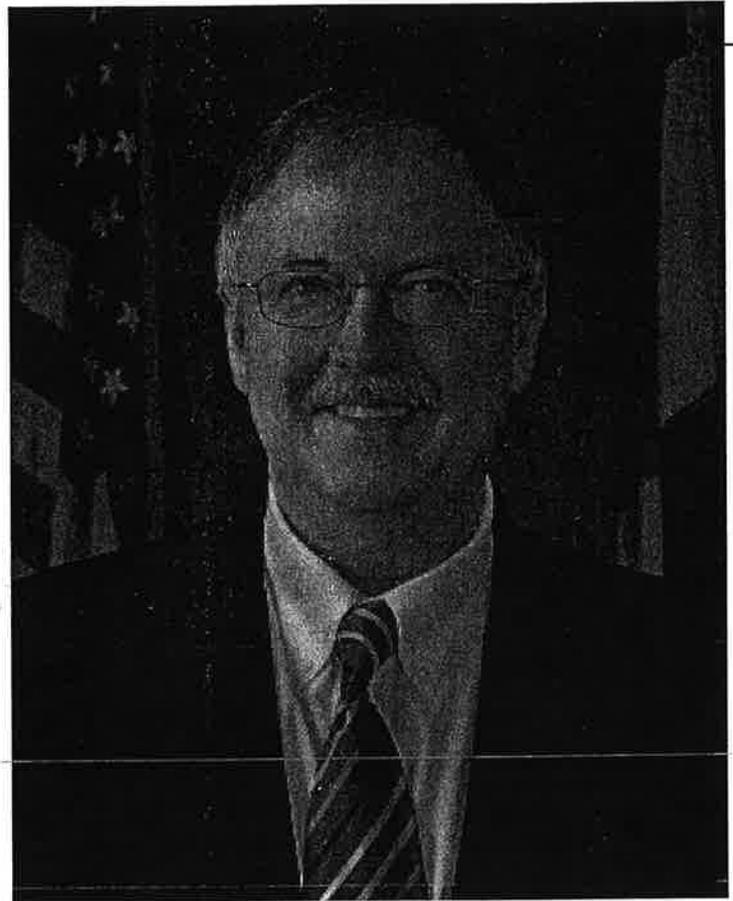
The Colorado chapter of the ACLU took the lead in campaigning (<http://aclu-co.org/co-prisons-continue-to-warehouse-mentally-ill-in-solitary-confinement/>) against the isolation of mentally ill prisoners. Denise Maes, the organization's public policy director, told I-News the law signed today "makes a very important policy statement that it's wrong to place seriously mentally ill offenders in solitary confinement."

Now, Maes said, the ACLU-Colorado intends to turn its attention to the isolation of mentally ill inmates in county jails. But she acknowledged that a policy change there may be a heavier lift.

"Municipal jails are just a hodgepodge of different activities not very well regulated by the state," said Maes. At the same time, a shortage of psychiatric beds and a lack of funding for alternative mental-health treatment put a huge burden on jails, she said. Resources are thin.

Still, said Maes, the same arguments that changed the policies in the state prisons also apply to jails.

"Keeping a seriously mentally ill offender in solitary confinement is unconstitutional, and at some point the state has to have the resources to deal with it. Otherwise, they'll be faced with it in court," said Maes. "Communities have to find the resources."



Handout Photo / Colorado Department of Corrections

Tom Clements, the late executive director of the Colorado Department of Corrections, was shot to death at his home near Colorado Springs on March 19, 2013, by a just released inmate who'd long been held in solitary confinement. Clements advocated cutting solitary confinement for the mentally ill.

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Rough Draft

LR424
August 08, 2014

SENATOR LATHROP: But your group hasn't examined that as part of developing policy on restrictive housing? [LR424]

ROBERT HOUSTON: One of 13 principles has to do with a mental health review within 72 hours of placement by a trained mental health person, by someone trained in mental health. And so it's the beginning of recognition that the way that we're doing it nationwide needs to change. We can't continue to have administrative confinement. That doesn't mean that there's going to be a change tomorrow or the next day or even the year. But it has to change. We have a legal responsibility to separate the individuals from the general population, but at the same time we have a responsibility to that individual to attend to their mental health issues, their substance abuse issues, their social issues, and so forth, as best we can. And although I can say very definitively that Nebraska is doing it as good as anybody in the country, it's still not good enough. [LR424]

SENATOR LATHROP: And the problem there is the mental health issue, isn't it? [LR424]

ROBERT HOUSTON: Well, that's a big part of it. [LR424]

SENATOR LATHROP: You isolate somebody from other... [LR424]

ROBERT HOUSTON: Um-hum. [LR424]

SENATOR LATHROP: ...human beings... [LR424]

ROBERT HOUSTON: Yes. [LR424]

SENATOR LATHROP: ...for day in and day out,... [LR424]

12



Evan Ebel forced pizza driver to make recording before his murder

By Sadie Gurman
The Denver Post

POSTED: 02/10/2014 03:16:58 PM MST21 [COMMENTS](#) | UPDATED: 10 MONTHS AGO



Evan Ebel (Colorado Dept. of Corrections)

Moments before he killed Nathan Leon, parolee Evan Ebel forced the pizza delivery driver to record a rambling statement that seemed to denounce prison officials for putting inmates such as himself into solitary confinement.

Prosecutors made that revelation in federal court filings related to the upcoming sentencing of Stevie Vigil, who pleaded guilty to buying the 9mm Smith & Wesson handgun Ebel used to kill both Leon and Colorado prisons chief Tom Clements in March.

In the filing, federal prosecutors state outright that Ebel killed Clements, even though El Paso County law enforcement officials have not yet definitively named Ebel as the gunman. Ebel's gun had been linked to both the killings of Leon and Clements.

The recording was found on a hand-held voice recorder discovered among other items after Ebel was killed in a shootout with Texas authorities on March 21, 2013.

Nearly a year later, the recording is the strongest indication so far that Ebel was motivated at least in part by his anger over the time he spent in administrative segregation.

"For twenty years we've been subject to your faddism not witness ours, you didn't give two (expletive) about us or our families and you ensured that we were locked behind a door, to disrespect us at every opportunity, so why should we care about you and yours," Leon read into the recording device before Ebel fatally shot him on March 17, according to the transcript.

The transcript seemed to contain some mistaken words.

"In short, you treated us inhumanely, and so we simply seek to do the same, we take (comfort) in the knowledge that we leave your wives without husbands, and your children fatherless. You wanted to play the mad scientist, well they will be your Frankenstein."

Authorities have not released the actual recording, and the transcript contained in the filing was the first disclosure of its existence.

Police found Leon's body in a remote stretch of Golden shortly after Ebel lured him to a truck stop by ordering a pizza.

Authorities have said Ebel used Leon's Domino's uniform two days later to disguise himself at the front door of Clements' Monument home. Ebel then fled to Texas.

Leon's Domino's shirt, visor and pizza box were among the items found in Ebel's 1991 Cadillac DeVille. Police also found a hit list

that included the names of Clements and other prison and law enforcement officials, sources have told The Denver Post.

Authorities have said they are investigating whether Ebel, 28, acted alone or in concert with fellow members of a white supremacist prison gang, the 211 Crew. Whether Ebel or other gang members harbored "deep-seated anger toward prison officials" is something detectives continue to explore as a possible motive, El Paso County sheriff's Lt. Jeff Kramer said Monday, emphasizing that the investigation is massive and ongoing.

"This is really still an active case," Kramer said. Detectives have spent countless hours identifying and contacting Ebel's associates and probing their claims, which continue to lead them in new directions, he said.

The new details about the investigation emerged in court filings related to the March 3 sentencing of Vigil, Ebel's childhood friend who purchased the gun from an Englewood shop on March 6, 2013. Prosecutors arguing for a lengthy sentence plan to call witnesses, including Leon's relatives, Clements' wife, Lisa, and Montague County sheriff's Deputy James Boyd, whom Ebel shot in the face while fleeing Texas authorities.

"Vigil put a murder weapon in the hands of a murderer," prosecutors wrote in the filings. "While Evan Ebel is ultimately responsible for the shootings, Vigil enabled these horrific crimes by giving Ebel the tool he needed. Lives were lost and families were devastated as a result."

Leon's mother-in-law, Bernadette Alness, said Monday that her family was unaware of the tape recording.

"There's probably fear in his voice. He probably knew he was going to die," she said. "The thing that goes through all of our minds is the fear that Nate must have felt, being thrown in a trunk, going for a ride. ... There are still so many questions. The devastation continues. It's not going to end."

Ebel spent much of his time behind bars in administrative segregation, and he was released to parole directly from ad-seg on Jan. 28, 2013.

His father, Jack Ebel, said that nearly 5½ of the six years his son had been incarcerated had been spent in solitary confinement.

"He may have had mental conditions going on," Jack Ebel told a state Senate committee in 2011. "But they are exacerbated to the point that I hardly recognize my son sometimes. We are creating mental illness. We are exacerbating mental illness."

Sadie Gurman: 303-954-1661, sgurman@denverpost.com or twitter.com/sgurman

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Transcriber's Office
Rough Draft

LR424
August 08, 2014

SENATOR LATHROP: Why is that, Bob? [LR424]

ROBERT HOUSTON: It's a concern that Marshall Lux and I share. It's a concern that the Department of Corrections recognizes. It's not good. It's hundreds of people, thousands of people across the country are released from either jails in high-security jails or from prisons right into the community. And it is certainly something that's being addressed by the restrictive housing because it's not good. We wish there was an option to not do that. [LR424]

SENATOR LATHROP: What would it take to have an option to not do that? [LR424]

ROBERT HOUSTON: Well,... [LR424]

SENATOR LATHROP: Do we need more beds, more programs, more space? [LR424]

ROBERT HOUSTON: I think probably the best way to look at it more definitively is that we know what the facilities are that we have in the Department of Correctional Services here, and we have 250 people, we'll say, at any one time on administrative or restrictive housing. Each one of those individuals has to be separated from other individuals not only in general population but also within the administrative confinement unit. And so you take your resources and dissect that 250 ways, and so how do you ever have the resources to provide 250 segments of mental health services that would match up with services they could get in general population? It's difficult. There's nobody in the country that does it any better and have figured out how to do that. It's tough. [LR424]

SENATOR LATHROP: Yeah, I keep hearing you say that, and it sounds like, well, everybody is doing it this way, it ain't good, but we're no worse than the...than anybody else, and so I guess we're going to keep doing it that way. But it... [LR424]

ROBERT HOUSTON: No, that isn't what I said. What I said was that it's not the most

148



COLORADO

Department of Corrections

Rick Raemisch
Executive Director

**SB 11-176 ANNUAL REPORT:
ADMINISTRATIVE SEGREGATION FOR
COLORADO INMATES**

**A REPORT SUBMITTED TO THE
JUDICIARY COMMITTEES OF THE
SENATE AND HOUSE OF REPRESENTATIVES
DUE JANUARY 1, 2014, PURSUANT TO C.R.S. 17-1-113.9(1)**

Prepared by

Maureen O'Keefe
Alysha Stucker
Office of Planning and Analysis

January 2014

Table of Contents

Introduction.....	1
Background.....	1
Strategic Plan.....	2
Deputy Director Reviews.....	2
NIC Review.....	3
FY 2013 Reform Efforts.....	3
Ongoing Reform Efforts.....	6

Introduction

This annual report outlines the use of administrative segregation for inmates within the Colorado Department of Corrections (CDOC) pursuant to Senate Bill (SB) 11-176, which states:

On or before January 1, 2012, and each January 1 thereafter, the executive director shall provide a written report to the Judiciary Committees of the Senate and House of Representatives, or any successor committees, concerning the status of administrative segregation; reclassification efforts for offenders with mental illness or developmental disabilities, including duration of stay, reason for placement, and number and percentage discharged; and any internal reform efforts since July 1, 2011.

The purpose of this report is to describe ongoing efforts to review and modify administrative segregation since SB 11-176 was enacted. The data in this report are through fiscal year (FY) 2013.

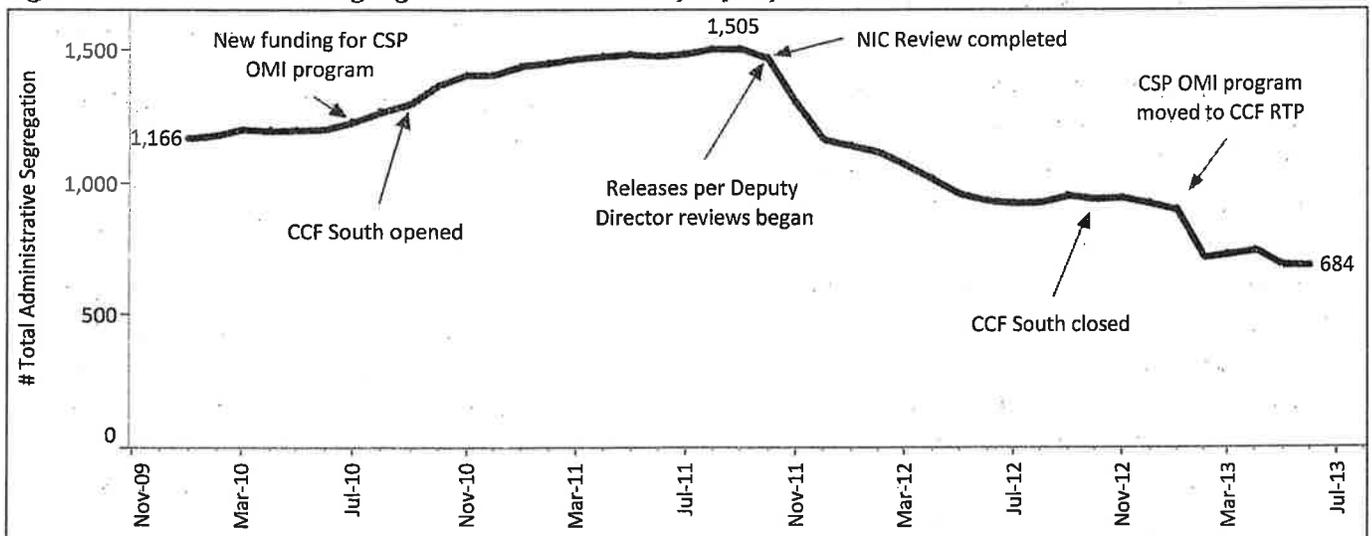
Background

In April 2011, CDOC began formulating an outcome-based strategic plan with long-term goals and objectives. Recognizing the concerns raised by SB 11-

176, the Department identified a strategic initiative to critically examine the policies, procedures, and practices of administrative segregation to make improvements consistent with an independent study and to decrease the number of offenders releasing directly from administrative segregation to parole or the community. This strategic objective included a high-level Deputy Directors' review of offenders in administrative segregation for longer than a year and the commission of an independent analysis of administrative segregation policies, procedures, and practices with the support of the National Institute of Corrections (NIC), U.S. Department of Justice.

Figure 1 shows the administrative segregation population trends along with key timeline events. CDOC received new funding in FY 2011 to open a program for offenders with mental illness (OMI) in administrative segregation at the Colorado State Penitentiary (CSP). In the same year, CDOC received funding to open 316 beds at Centennial Correctional Facility (CCF) South, and the administrative segregation population continued to rise. Following its peak in September 2011, the population has been on a steady decline, stimulated by deputy director reviews and policy changes stemming from the NIC Review. The decrease in the population no longer necessitated the 316 beds at CCF South, and they

Figure 1. Administrative segregation with timeline of key reform initiatives



were closed in October 2012. Also in FY 2013, the CSP OMI program was moved to CCF North. With the move and implementation of the revised classification system, inmates in the residential treatment program (RTP) at CCF North were no longer given a status of administrative segregation.

Strategic Plan

Two outcome measures were identified for FY 2012 as part of the CDOC strategic plan. These measures were intended to evaluate the success of DOC's reform efforts: (1) to reduce the rate of inmates in administrative segregation and (2) to reduce the percent of offenders who release directly from administrative segregation to parole/community (of all leaving administrative segregation). The FY 2012 goals were exceeded for both measures, and therefore, the measures were discontinued for FY 2013. However, due to renewed efforts to reform administrative segregation, new targets were set on these same measures for FY 2014. Figures 2 and 3 show the FY 2012 and 2014 targets along with actual performance on each measure. Although the rate of releases to the community decreased substantially in FY 2012 due to the high number transitioning into general population prisons, the number of releases did not drop substantially until FY 2013.

Deputy Director Reviews

Prior to the completion of the NIC study, Executive Directive 28-11 was issued, which required the Deputy Directors of Prison Operations to review all administrative segregation offenders who had been at that level of confinement for more than one year. Offenders participate in a face-to-face interview with at least one of the CDOC deputy directors, a facility case manager, a mental health staff member, and an intelligence officer. (Wardens also helped conduct some of the initial reviews.) Offenders were recommended for retention in administrative segregation or release back into general population. Decisions were based on a number of factors, including the number of administrative segregation

Figure 2. Percent in administrative segregation

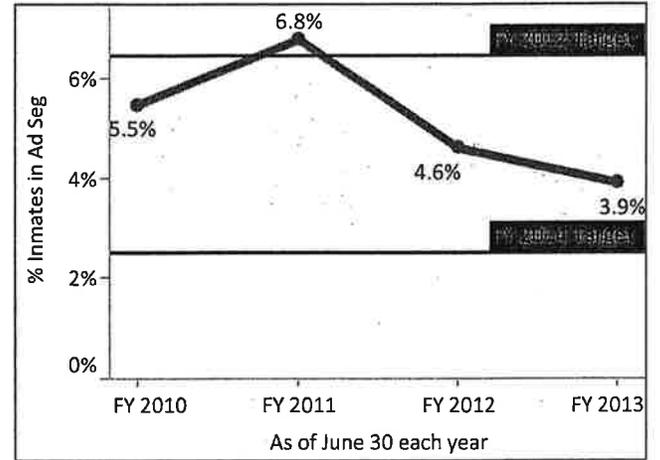


Figure 3. Releases directly to community

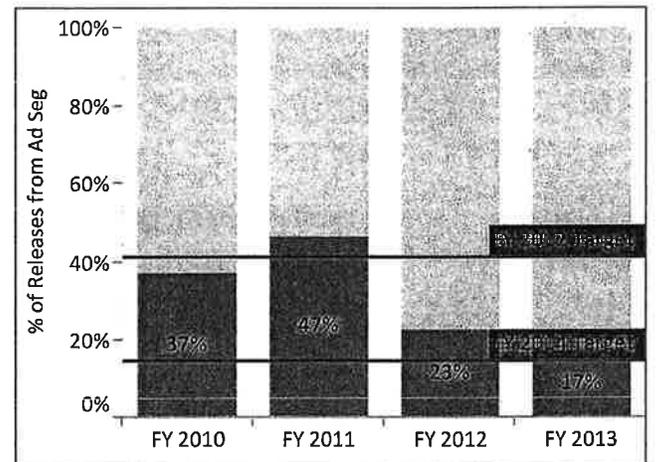


Figure note. The number of releases to the community was 237 in FY 2010, 232 in FY 2011, 220 in FY 2012, and 108 in FY 2013.

placements (particularly placements due to Security Threat Group [STG] activity), protective custody concerns, the number of Code of Penal Discipline (COPD) convictions in the previous 2 years, the number of assault convictions, program completions (e.g., high school diploma, General Education Diploma, and cognitive education), STG membership, mandatory release date, and mental health needs.

Offenders retained in administrative segregation included those who posed a continuing safety threat, those who refused to attend their review hearing, those who were recommended for Level 4B (long-term administrative segregation, determined solely by the Director of Prisons), or those who were recommended to participate in the CSP OMI program:

(before it was moved to CCF RTP in January 2013). Releases have occurred through a variety of mechanisms, such as directly to the general prison population, following completion of cognitive programming (Level 4A), transfer to protective custody, or referral to CCF RTP. Figure 4 provides the number of deputy director reviews conducted in FYs 2012 and 2013, along with their decisions to retain or release offenders. Of the 772 recommended for release, 690 released to general population (most went to CCF or Sterling Correctional Facility initially); the remaining 82 were ultimately retained in administrative segregation due to behavior post-decision.

Most offenders who released to the general population have successfully remained there. Nearly a quarter of the 690 released have even progressed from general population to the community, where they are currently serving their sentence on parole or in community corrections or they have completed their sentence. However, 107 had returned to administrative segregation by June 30; Figure 5 displays the primary reason for each return.

NIC Review

The objective of the NIC analysis was to ensure that administrative segregation beds are used to house the most dangerous and disruptive inmates in Colorado’s prison system. The independent analysis was conducted by Dr. James Austin, founder of the JFA Institute and a nationally recognized expert in correctional classification systems, and Emmitt Sparkman, Deputy Commissioner of the Mississippi Department of Corrections and an expert in administrative segregation practices.

The recommendations from the NIC review focused on placement of offenders in administrative segregation (i.e., narrower criteria, use punitive segregation before administrative segregation, mental health reviews), modifying the quality of life system, and centralized management of administrative segregation. Policy changes were made accordingly

Figure 4. Deputy Director decisions

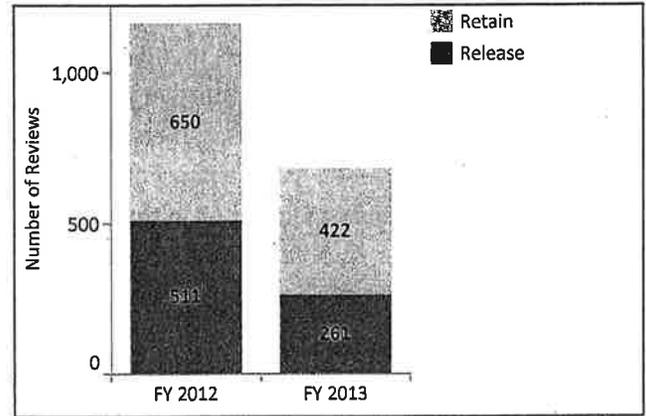
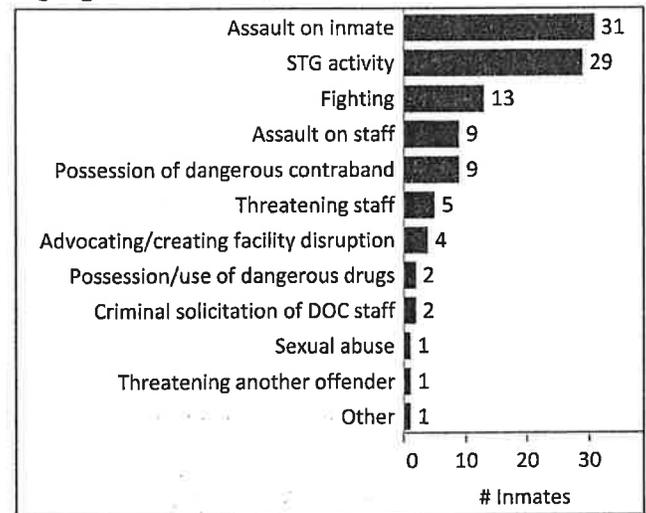


Figure 5. Reasons for return to administrative segregation



and are described fully in the January 2013 SB11-176 report.

FY 2013 Reform Efforts

CDOC undertook a validation study of the male inmate classification instrument in the time since SB11-176 was passed. This study was also conducted by James Austin and was completed in 2012, recommending changes to items on the instrument, cut-off scores, and classification procedures. After a pilot test was conducted by CDOC and computer programming changes were made, the revised instrument and process was implemented beginning February 2013. As part of the changes, administrative segregation became a status separate from custody level. Also

implemented as part of the classification study recommendations, a protective custody unit was created. This enabled some offenders to move from administrative segregation into a protective custody unit. Protective custody is also a status, meaning that each inmate can be assessed and managed at the appropriate custody level while housed in the protective custody unit. As of June 30, 2013, there were 52 inmates on protective custody status.

The focus of reforms in FY 2013 has been on offenders with mental illness who are in administrative segregation. In 2010, the CSP OMI program was established to provide treatment to administratively segregated offenders who have mental illnesses in order to improve their ability to function effectively, to decrease their isolation, and to progress them to less restrictive facilities. In order to reclassify mentally ill offenders, as was the intent of SB11-176, the CSP OMI program was transferred to CCF. With the transfer, a new status of RTP was created, and program participants were no longer classified as administrative segregation. This enabled the program to house and treat offenders of any classification level, although it should be noted that the program continues to target inmates who are in administrative segregation or would otherwise be placed in administrative segregation. A detailed report on the OMI program was submitted to the House and Senate Judiciary Committees (per the Request for Information to the Governor by the Joint Budget Committee in the fiscal year 2012-13 Appropriations Report) in January 2013. A similar report is forthcoming in January 2014.

The present report focuses on offenders with mental illness in administrative segregation. CDOC uses a coding process to identify and track offenders who have mental health treatment needs. The psychological needs level codes (P codes) range from 1 to 5, with 3-5 indicating moderate to severe needs. Because the P code identifies broad need levels, a definition was created in February 2013 to identify those with a major mental illness. Major mental illness is defined by clinical diagnoses; qualifying disorders include schizophrenia, bipolar disorder, major depressive

disorder, and delusional or psychotic disorders. Beginning in April 2013, an "M" qualifier was used to designate offenders with *major* mental illness. Previously a "C" qualifier was used to designate offenders with *chronic* mental health needs. Figure 6 shows the number of mentally ill offenders in administrative segregation over time, both those coded as P3-5 and the subset of those with the C or M qualifier, as well as those offenders identified with a developmental disability. There is overlap between mental illness and developmental disability; 27 of the 41 developmentally disabled in 2013 also had an elevated P code (6 of whom had an M qualifier).

The data reflect a substantial drop from FY 2012 to FY 2013 in offenders with mental disorders who are housed in administrative segregation. Efforts to reduce the mentally ill population are continuing in FY 2014, with a target to remove all offenders with major mental illness from administrative segregation.

Figure 6. Inmates with mental disorders in administrative segregation

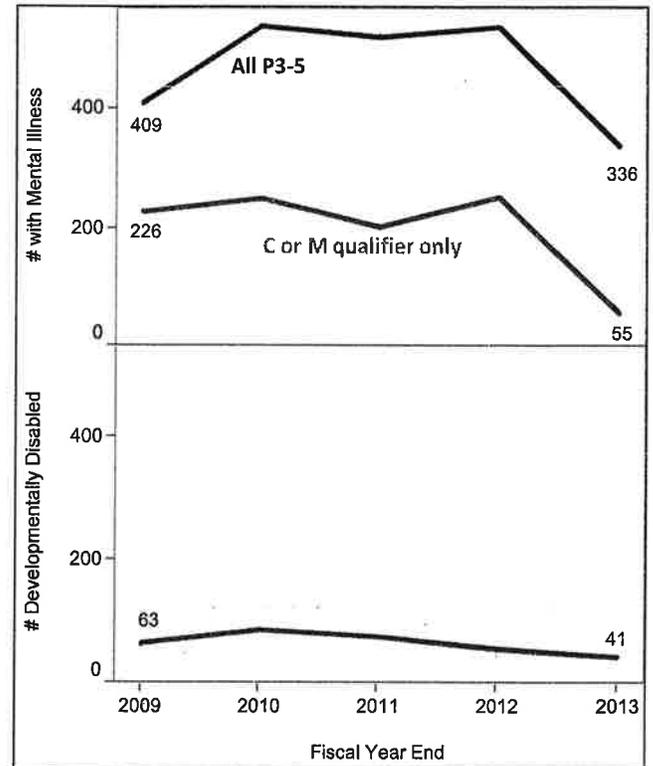


Figure note. C qualifiers were used until midyear in 2013. Although similar to M qualifiers, they are not precisely equivalent.

Inmate files were reviewed by researchers to code reasons for placement of mentally ill or developmentally disabled inmates into administrative segregation. From this review, the primary reason for placement was obtained for each offender, even if there were multiple factors affecting the placement decision. Also, because a brief narrative cannot provide enough detail to convey the seriousness of the incident, a placement severity rating was coded for each offender. For example, a less serious assault could entail throwing an item at staff versus a more serious assault such as throwing an inmate off of a tier. It should be noted that placement severity ratings of 1 are serious, just less serious than those with higher severity ratings. These reasons are shown in Figure 7 below.

Figure 7. Reasons for placement of inmates with mental illness or developmental disability

	Placement Severity			
	1	2	3	4
Advocating facility disruption	■			
Assault on inmate		■	40	■
Assault on staff	■	26	29	
County jail behavior	■	■	■	
Death row				■
Escape		■	■	
Fighting		■	■	
Management problem	■	■		
Murder or attempted murder				■
Other	■	■		
Paroled from ad seg	■		■	
Possession of dangerous contraband	■	36		
Possession/use of drugs	■	■	■	
Program failure	■	■	■	
Solicitation/sexual intimidation of staff	■	■		
STG activity	■	24	42	
Threatening staff	■	■		■
Unauthorized possession	■			

Figure note. The smallest box represents one inmate and the biggest one represents 42 inmates. Placement severity of 1 is the least serious and 4 is the most serious.

Some mentally ill offenders have been confined in administrative segregation for years. Figure 8 shows the duration of all inmates in administrative segregation on June 30, 2013. The median length of stay was shorter for those with a mental illness or

developmental disability (13.3 months) versus those without (15.6 months). However, there were more extreme outliers (i.e., inmates with long periods of segregation) among those with a mental illness or developmental disability.

Figure 8. Months in administrative segregation

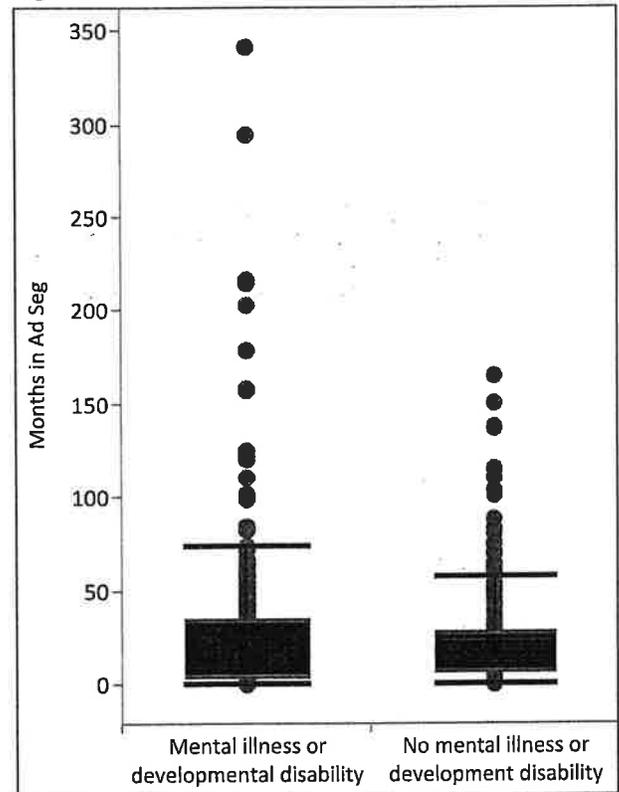
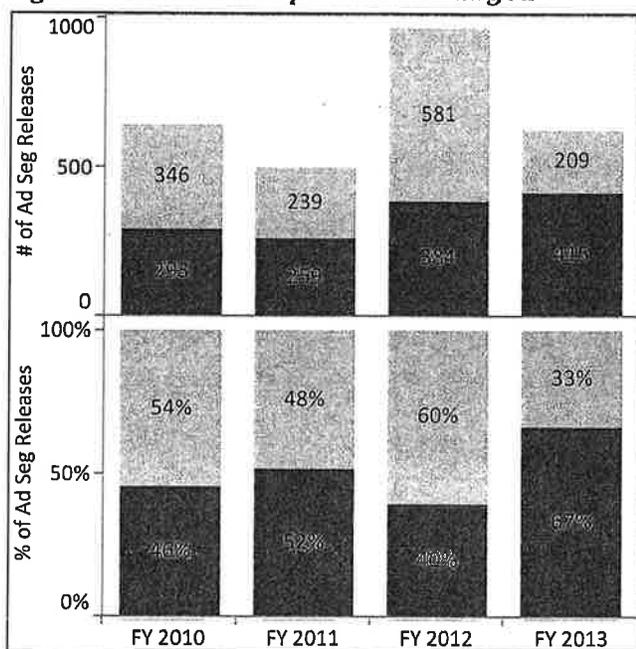


Figure note. The shaded boxes represent approx. 50% of each group, and the median length of stay is shown where the shading becomes lighter. Each line, or whisker, outside the shaded box represents cases falling in the upper and lower 25th percentiles. Circles represent people, with outliers falling outside of the box and whiskers plot.

Offenders with mental illness or developmental disability comprised 67% of those who discharged or released from administrative segregation in FY 2013 (see Figure 9). This increase from previous years is in large part due to the concerted efforts of CDC to remove mentally ill offenders from administrative segregation and place them to the CCF RTP where they can participate in enhanced treatment services.

Figure 9. Number and percent discharged



Ongoing Reform Efforts

Over the last couple of years, the Department has increased prerelease and reentry services for offenders who are discharging or paroling directly

from administrative segregation. Every effort is made to ensure that offenders do not release directly to the community while on administrative segregation status, but when it is unavoidable offenders receive services from an administrative segregation transition specialist and a transition plan is created. Beginning in FY 2014, case managers coordinate with Parole so that a Community Parole Officer will personally transport an offender who is releasing directly from administrative segregation to parole. This practice will facilitate the safe transition of these high risk offenders back into the community.

Beginning in December 2013, CCF has repurposed a 16-bed dayhall as the RTP diagnostic unit for offenders with a major mental illness who meet criteria for an administrative segregation review. This diagnostic unit will serve to determine the appropriateness for placement into the Residential Treatment Program or other facility placement. Offenders with a M qualifier on the psychological needs level (P code) will no longer be assigned to administrative segregation status.



Dan Jenkins <djenkins@leg.ne.gov>

Restrictive Housing Request

Beaty, Jeffrey <jeffry.beaty@nebraska.gov>
 To: Dan Jenkins <djenkins@leg.ne.gov>

Mon, Nov 24, 2014 at 1:45 PM

Dan,

Below is the Restrictive Housing count for 11/17/14:

# of Unique inmates on RH 11/17/14	629
Administrative Confinement	153
Immediate Segregation	118
Disciplinary Segregation	91
Protective Custody	310
Death Row	11
Intensive Management	<u>4</u>
Total # of seg status	687

Also, it appears the info I originally provided from 9/9/14 is missing 11 people that were on Intensive management (the total number of inmates on rh is accurate, but the status column was missing IM and only adds up to 726).

One last question, can you forward me a list of the individuals who have been invited to testify tomorrow at the LR 424 hearing?

Thanks,

Jeffry Beaty

Planning, Research and Accreditation Director

Nebraska Department of Correctional Services

P.O. Box 94661

Lincoln, NE 65809

Work: 402-479-5767

Cell: 402-853-2331

Email: Jeffry.beaty@nebraska.gov

From: Dan Jenkins [<mailto:djenkins@leg.ne.gov>]

Sent: Wednesday, November 19, 2014 2:54 PM

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World-Herald special investigation: Nebraska prison doors open too soon

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POSTED: SUNDAY, JUNE 15, 2014 1:00 AM

By Todd Cooper and Matt Wynn / World-Herald staff writers

Convicted killer Marvin Buggs could sniff freedom.

The 53-year-old had found himself within two years of release from prison after his manslaughter conviction in the December 2000 strangulation of a mother whose body was left on a snowbank in east Lincoln.

He shouldn't have been.

A World-Herald investigation showed that Nebraska prison officials — using a flawed formula to calculate sentences — had wrongly shaved five years off the sentence Buggs received. They had him set for release in June 2016. His actual release date: June 2021.

The examination of prison records of Buggs and scores of other inmates also revealed that Nebraska Department of Correctional Services officials had released or were set to release dozens of prisoners years before their sentences were supposed to end.

All told, state officials had carved at least 750 years off the collective sentences of more than 200 of the state's worst criminals. The problem: The department



11 convicts who were let out early

Read the details of 11 prison terms shortened because of miscalculations by state prison officials »

Corrections controversies

Corrections officials came under fire, and then-director Bob Houston retired, after incidents in recent years including:

» The July 30, 2013, 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 had killed four Omahans.

He is awaiting sentencing.

» An inmate driving program that allowed prisoners to drive corrections vans. In June 2013, prisoner Jeremy Dobbe drove nearly 90 mph, crossed the center line and ran into a car in Lincoln, killing Joyce Meeks.

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was using a formula that doesn't square with how sentences should be calculated.

After The World-Herald revealed its findings Friday to Corrections Director Michael Kenney, he immediately directed staff to recalculate the sentences. He said he had been unaware of the problem.

"We're in triage mode," Kenney said. "Public safety is paramount. Correcting the record is paramount. We have people working very hard toward that effort now."

The cases involve not just any prisoners but the worst of the worst. Killers. Gun thugs. Habitual criminals. Child rapists. Drug dealers. Basically, any prisoners the Legislature has deemed deserving of mandatory prison terms.

The monthlong investigation revealed that because of the department's faulty calculations:

» Inmates received breaks of anywhere from six months to 15 years off their sentences.

» Get-out-of-jail-early cards were given to at least 50 prisoners who already have been released. At least two of those — a drug dealer and a robber — are back behind bars for new crimes.

» More than 150 inmates were awaiting early release, courtesy of the Corrections Department.

» Judges' sentences were undermined. In the case of one sex offender, a judge fashioned the sentence so that the two-time child rapist would not be eligible for mandatory release until he was 81. By Corrections' faulty calculations, he would have been released when he turned 66.

» Policymakers' goal of parole supervision for offenders was thwarted. In more than 100 of the 200 cases, Corrections' calculations resulted in prisoners being released before they were even eligible for parole.

The World-Herald discovered the errors while combing through the department's website and a database of inmates' prison dates and sentence lengths.

The results left Corrections officials scrambling, and authorities slack-jawed.

Kenney said he immediately consulted with the Nebraska Attorney General's Office to confirm that The World-Herald's findings were right. He then began informing

» Weekend furloughs given to Jermaine Lucas, a gang member with a violent history. Lucas was on a furlough in September 2012 when Omaha police, responding to

a shots-fired call, saw him lunge for a gun and fatally shot him.

Different causes behind the early release of Jenkins

Nikko Jenkins' rampage, during which he killed four Omahans in 10 days last August, is an example of the potentially deadly consequences of early prison release.

But Jenkins, 27, did not benefit from the Nebraska Department of Correctional Services' formulas that have led to the early release of dozens of prisoners, a World-Herald analysis shows.

Rather, Jenkins got out early after a judge, trying to tack two years onto Jenkins' decadelong sentence after he assaulted a prison guard, gave Jenkins 513 days' credit for time served.

Authorities say Jenkins should not have received that credit because he was still serving his original term. Had the judge not granted the credit, Jenkins would have been in prison through most of this year.

Jenkins' prison term also has been the subject of scrutiny because he lost only 15 months of day-for-day, good-time credit, despite a history of assaultive and disruptive behavior in jail.

Jenkins was released from prison July 30. His killing spree began Aug. 11.

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everyone in the prison system, from wardens to inmates. Kenney said his staff was breaking the news to about a dozen inmates slated to be released this month.

The message?

"They will not be going home when they thought they would be," Kenney said.

Kenney, a longtime prison official who became director in September, said his office will consult with the Attorney General's Office on whether the department will seek to round up inmates who already had been released.

Kenney said his staff had yet to sort out how many have been released and how many were set to be released.

Nor had he figured out why the department hadn't acted on a Nebraska Supreme Court ruling from February 2013 that spelled out the proper way to calculate these prisoners' sentences. Kenney said he hadn't been aware of the Supreme Court ruling until The World-Herald informed him Friday.

Corrections has a staff of three attorneys, and Kenney said Nebraska Attorney General Jon Bruning's staff typically keeps Corrections abreast of court rulings.

"It bothers me to the extent that I wish we had done this earlier," Kenney said. "I take it seriously. I'm concerned that (the ruling) wasn't applied immediately."

He wasn't the only one.

"Unbelievable," Douglas County District Judge Peter Bataillon said. "When I decide my sentence, I assume it's going to be carried out correctly by the penitentiary."

Sgt. John Wells, president of the Omaha police union, pointed out that these criminals aren't ideal candidates for parole. That makes calculating their release date all the more imperative.

"This is a stunner," Wells said. "Rarely do you catch me flat-footed, but I am at a loss for words over this.

"What in the hell is the state doing? We're not talking about low-level stuff. Violent crimes. Sexual assaults. These are absolutely the people who should be locked up. It's maddening."

State Sen. Ernie Chambers said he is no fan of mandatory prison terms, arguing that they take discretion out of judges' hands.

However, Chambers said, he also abhors the net effect of the Corrections Department's miscalculations: that prisoners are cast into society without the opportunity for parole. Such supervised release benefits the prisoner — and, he said, it benefits society.

"If a person jams out before he is eligible for parole, the whole system is skewed," Chambers said.

The root of the faulty formula goes back two decades.

In 1992 the state adopted the foundation for its current version of the "good-time law," awarding every prisoner a day off for every day served.

Then, in 1995, state senators created Nebraska's version of a "three strikes and you're out" law, setting a mandatory term of 10 years for habitual criminals.

The Legislature spelled it out this way: Mandatory terms must be served in full — and prisoners should get no day-for-day credit for that portion of their sentences.

Since then, mandatory terms have been enacted for drug dealing, child sexual assaults



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and gun crimes.

The equation that lawmakers laid out for such prisoners: Serve the full mandatory term, add half of the remaining sentence and you have the actual years the prisoner should serve.

Corrections officials quickly adopted that formula in calculating a prisoner's minimum sentence for parole eligibility.

They were less confident in applying that formula to the maximum term, also known as a prisoner's "jam date."

Memos and emails obtained by The World-Herald showed that Corrections Department officials were uncertain as to whether they should apply that formula to jam dates.

In 1995, administrators decided that in computing a prisoner's release date, they would simply cut the maximum prison term in half — or release the prisoner after the mandatory term was served, if that was longer.

That decision ignored large chunks of the remainder of a prisoner's sentence, leading Corrections officials to set dozens of incorrect release dates.

Consider again the case of Marvin Buggs.

Buggs and another man, Steven Tucker, were charged in the killing of 35-year-old Cheryl Olson Walter. Authorities accused the men of partying with Walter, trying to get her drunk, and then killing her after sexually assaulting her or having sex with her.

The problem: Prosecutors couldn't prove whether Walter was killed by Buggs or Tucker, or both. Authorities alleged that both men hauled Walter's body and left it on a snowbank near 70th Street and Arbor Road.

With nothing conclusively pointing to who committed Walter's murder, prosecutors turned to other tools to keep Tucker and Buggs in prison.

They charged both career criminals with manslaughter and being habitual criminals.

Each pleaded no contest and was found guilty. A judge sentenced Buggs to 30 years in prison, 10 of which had to be served in full.

Corrections then set Buggs' minimum sentence for parole eligibility at 20 years — the 10 mandatory years plus half of the remaining term.

As for his maximum sentence, the department cut the 30 years in half, setting his release date at 15 years.

In other words, Buggs had been set to be released before his parole eligibility date.

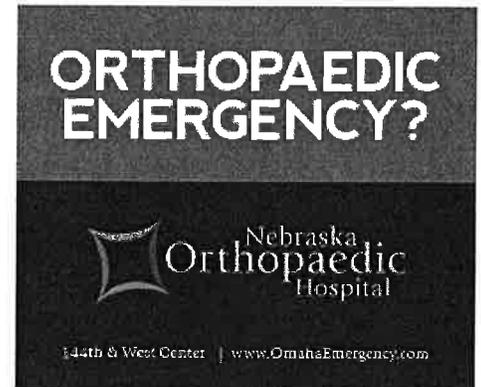
Tucker had received a similar break: five years off his sentence.

"That makes zero sense. None," Judge Bataillon said. "You cannot have a jam (release) date earlier than a parole date. This is not rocket science. If I can figure it out, it can't be that hard."

In the 2013 ruling — and in a 2002 ruling — the Nebraska Supreme Court clarified how Corrections officials should calculate such sentences.

The high court noted, based on its review of the legislative debate preceding the law's passage, that state senators' intent was that the mandatory term be served before good time credit starts.

"It would not serve the (Legislature's) intent if a defendant could be mandatorily



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discharged before being eligible for parole," the high court wrote in 2002.

In 2013, Nebraska Supreme Court judges reiterated that position, saying the full mandatory term must be served on both the minimum sentence for parole and the maximum sentence for release.

"Logically, a defendant must serve the mandatory minimum portion of a sentence before earning good time credit toward the maximum portion of the sentence," the high court wrote in 2013.

"Thus, a defendant would be unable to earn good time (day-for-day) credit against either the minimum or maximum sentence until the defendant had served the mandatory (term)."

That ruling came out 18 months ago.

It wasn't until Friday that Corrections began to make corrections. "I'm looking into what that lag was," Kenney said. "I don't fully understand it."

Relatives of the woman killed by Tucker and Buggs had an even harder time digesting it. The Walter family members said they weren't enraged, just dismayed.

To set an early release for "someone with that type of criminal background, when their crime escalated to manslaughter?" a cousin, Larry Bradley, asked.

"People of Nebraska need to be well aware of the lack of ability of state officials to manage these criminals."

Contact the writer: 402-444-1275, todd.cooper@owh.com



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Posted in Metro, Crime, Nebraska on Sunday, June 15, 2014 1:00 am

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Hand Llama · Top Commenter · Omaha, Nebraska
Don't forget that politicians like Brad Ashford and Gov Heineman fought to keep keep the Good Time laws. Heineman even said that the odds of someone committing a crime after being released on Good Time was very low. Then the state released Jenkins back on the Omaha streets and four people were murdered last summer. Even after this, Brad Ashford continued to fight for Good Time laws during this years legislature.
Reply · Like · June 15 at 5:51 am

Felicia AppleofHiseye Hepburn · Top Commenter · Consultant at Tastefully Simple, Inc.
The Good Time law is an excuse to let hardened criminals out! Look at the report done. The ONLY ones who benefitted from this were those who are violent! I seriously doubt ALL officials involved (or who were interviewed) knew nothing about this. Take Jenkins case, he did NO good time in prison yet they shaved his time and let him out early, even though he had attacked an officer in prison! I know it sounds conspiracy but I

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CRIME & COURTS

STATE IGNORES ANOTHER HIGH COURT RULING

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

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POSTED: MONDAY, SEPTEMBER 29, 2014 12:30 AM

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

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.

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.

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BRENDAN SULLIVAN/THE WORLD-HERALD

Herrnino Alamilla is incarcerated in Lincoln and has a projected release date of Feb. 13, 2024, which reflects the motor vehicle homicide sentence he received. But that does not include the 18 months he still owes on his original drug-dealing conviction. Alamilla said he had no idea he had been erroneously let out early. "That's crazy."



[View all 3 images in gallery.](#)

How the 51 made the cut

The World-Herald used a variety of tools to background the 171 prisoners who, according to a list released by Gov. Dave Heineman's office in July, had been released early since 1995.

First, state court records from the prisoners' original charges were consulted to identify place of residence. Anyone from outside the state was not backgrounded with the same rigor as those who lived in

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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."

Nebraska, but federal prison and sex offender filings were examined.

Federal and state sources confirmed that 17 others had been deported or were being deported. Another six died after their premature release, according to documents or state officials.

The World-Herald backgrounded 121 released prisoners using state court records.

Fifty-one of those were convicted of a crime during the period they were improperly set free, and a list of all the charges they incurred while at liberty was included in the analysis.

Several others, who are not part of this article, were charged with crimes while at liberty but weren't convicted. Dozens more who were later convicted of a crime were left out because the crime occurred after their sentence would have expired — sometimes by as little as one week.

The findings included two prisoners who have not been charged: a sex offender who has not reported his location to authorities for months, which is a felony; and Jermaine Lucas, who was killed by police officers when he pulled a gun during a furlough last fall.

One more felon has pending weapon charges but is back in prison, serving out the remaining year on his original sentence.

New crimes committed by released convicts

The 51 former inmates who committed new crimes while they still should have been behind bars for previous crimes were convicted of 33 felonies, 102 misdemeanors and a number of infractions. The crimes:

Homicide: 1

Motor vehicle homicide/driving while intoxicated: 1

Assault: 5

Assault of an officer with bodily fluid: 1

Assault of an officer, second degree: 1

Assault of an officer, third degree: 1

Assault, third degree: 1

Assault, domestic, third degree: 1

Traffic violations: 36

Drive under suspension/before reinstated: 17

Failure to use seat belt: 1

License vehicle without liability insurance: 1

Negligent driving: 1

No operator's license: 6

No proof of insurance: 3



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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.

Operator's license, carry and show when needed: 1

Operate motor vehicle to avoid arrest: 1

Reckless driving: 1

Suspended license: 2

Unlawful/fictitious display of plate/renew tab: 1

Violate stop or yield sign: 1

Sex offender registration violation: 5

Sex Offender Registration Act violation: 3

Sex Offender Registration Act violation, prior: 1

Sex Offender Registration Act violation, prior felony: 1

Child abuse: 1

Negligent child abuse, no injury: 1

Theft: 16

Theft by unlawful taking: 2

Theft by unlawful taking under \$100: 1

Theft-deception over \$1,500: 1

Theft-shoplifting \$0-\$200: 1

Theft-shoplifting \$0-\$200/ second offense: 1

Theft-shoplifting \$500-\$1,500: 2

Theft-shoplifting over \$1,500: 1

Theft-unlawful taking \$0-\$200: 5

Theft-unlawful taking \$201-\$499: 2

Forgery, receiving: 8

Criminal possession of a forged instrument: 1

Forgery, second degree, \$300-\$1,000: 1

Issue bad check: 3

Issue bad check, less than \$200: 1

Receiving unlawfully taken property under \$100: 1

Unauthorized use of a financial transaction device/\$200 to \$500: 1

Drug possession: 17

Possession of K2 or marijuana, 1 ounce or less, second offense: 1

Possession of marijuana, 1 ounce or less, first offense: 5

Possession of cocaine, 28-139 grams: 1

Possession of a controlled substance: 5

Possession or use of drug paraphernalia: 4

Possession of methamphetamine, 10-27 grams: 1

Drug distribution: 7

Deliver or intent to deliver controlled substance, Schedule 1, 2, 3: 2

Deliver or intent to deliver exceptionally hazardous drug: 5

Public employee pay data: Douglas, Lancaster, Sarpy Counties, City of Omaha

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» 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.

» 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.

Alcohol: 9

Consume alcoholic liquor in public: 1

Driving while intoxicated, no prior conviction: 1

Liquor-open container in public place: 4

Possess or consume alcohol in park: 1

Possess or consume, open alcohol container: 2

Weapons: 4

Possession of a deadly weapon by felon/fugitive: 1

Possession of a defaced firearm: 1

Possession of a firearm by a prohibited person, first offense: 2

Failure to appear: 15

Failure to appear in court: 1

Failure to appear or comply with citation: 12

Failure to appear when on bail: 2

Miscellaneous: 31

Attempted Class 1 misdemeanor: 1

Attempted Class 3A or Class 4 felony: 1

Closed property: 1

Disturbing the peace: 7

Failure to register: 2

Failure to disperse: 1

False Information: 2

False statement to officer: 1

Leave state as parolee, habitual criminal: 1

Lewd conduct: 1

Obstruct a peace officer: 1

Pawn property by a convicted person: 1

Pedestrian soliciting ride or business: 2

Possession by felon: 1

Protection order violation, first offense: 1

Refusal to submit to test, first offense: 1

Request to leave: 1

Solicit funds: 1

Trespass: 2

Violate fire safety regulations: 1

Violate Game & Parks regulations: 1

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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

Sentencing screwup

These four were among 750 inmates whose sentences were improperly cut short by the Nebraska Department of Corrections.

Learn more about each inmate at Omaha.com/prison



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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."

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.

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!"

Wincing 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.

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

"I 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."

In 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."

Clarence Mock, an Oakland, Nebraska-based defense attorney and former prosecutor, had another term 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

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'Good time' in Nebraska prisons is hard to lose, hard to change

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POSTED: TUESDAY, SEPTEMBER 24, 2013 12:00 AM |
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By Matt Wynn and Paul Hammel /
World-Herald Bureau

LINCOLN — “Good time” credit is tough to lose in Nebraska prisons, even if a person behaves badly.

Even when an inmate violates the prison rules, a World-Herald analysis shows, officials rarely apply penalties that would extend the time spent behind bars.

Over the past five years, inmates have been punished for 92,000 infractions, yet good time credit was taken away in less than 5 percent of those cases.

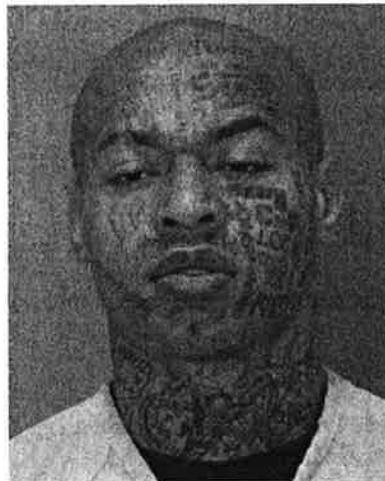
The state's good time law gives prisoners a day of credit for every day they spend behind bars, effectively cutting sentences in half.

While state law provides for good time, prison officials decide when to take it away.

Prison rules allow officials to add back time, but in relatively small amounts. Even cases of homicide or serious assault carry a maximum loss of one year of good time.

A court can also impose additional prison time for crimes committed in prison.

New questions about the use of good time pose a dilemma for state officials as they also work to address chronic prison overcrowding.



Nikko A. Jenkins

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The process of finding a solution was complicated last week when longtime State Corrections Director [Bob Houston abruptly retired](#).

The World-Herald requested information on the removal of good time after accused killer Nikko Jenkins was released July 30, about halfway into a 21-year sentence. In a 10-day span following his release, Jenkins is accused of killing four Omahans.

From 2005 to 2011, prison records show, Jenkins was written up at least eight times, for refusing to submit to a search, aggravated assault on a corrections officer, three episodes of using threatening language, two episodes of "tattoo activities" and creating a weapon out of a toilet brush.

A judge sentenced him to four more years for his assault. For all his transgressions, prison officials took away just under 18 months of good time credit, including three months for the assault.

Good time is sometimes restored, although prison officials couldn't say how often. Jenkins was given back at least a month of good time after it had been taken away, a prison spokeswoman said.

Records show his treatment was typical. Prison officials routinely use other punishments instead of keeping prisoners behind bars longer.

"There's no relationship between good behavior and good time, and that's troublesome," said State Sen. Steve Lathrop of Omaha. "My working assumption of good time was that it was getting taken away. Nikko Jenkins is an appalling example."

Gov. Dave Heineman declined to comment last week on the rate of good-time loss, referring questions to the Department of Corrections.

But in the wake of Jenkins' arrest, [the governor called for an end](#) to automatically awarding good time to hardened criminals. He said the system should change to require violent convicts to earn good time, and not just assume they will get it.

Dawn-Renee Smith, a spokeswoman for the Corrections Department, said good time is taken away when appropriate. If the punishment were used more often, she said, it could lose its significance.

She said the people who oversee the discipline process don't view the removal of good time as a tool to keep dangerous offenders — such as Jenkins — in prison longer.

Instead, she said, it's just one of many deterrents that can keep prisoners in line.

Former state prison warden Dennis Bakewell, who retired this past spring, echoed that, saying good time is an "excellent management tool" for managing inmates' behavior.

Bakewell said the department is in a tough spot: It has been criticized in the past for taking away too much good time and has been under pressure to reduce prison overcrowding, a problem that would worsen if good time was taken away and inmates kept behind bars longer.

"It's not always appropriate to take away a lot of good time," he said. "That doesn't mean the system we have can't be improved, but from my viewpoint, there are just too many inmates and not enough (prison) staff or facilities."

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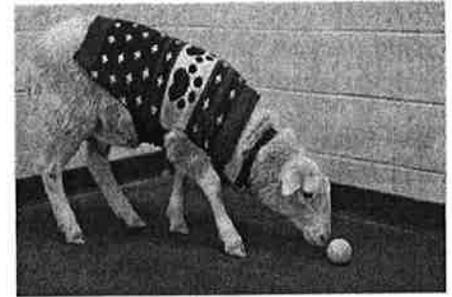
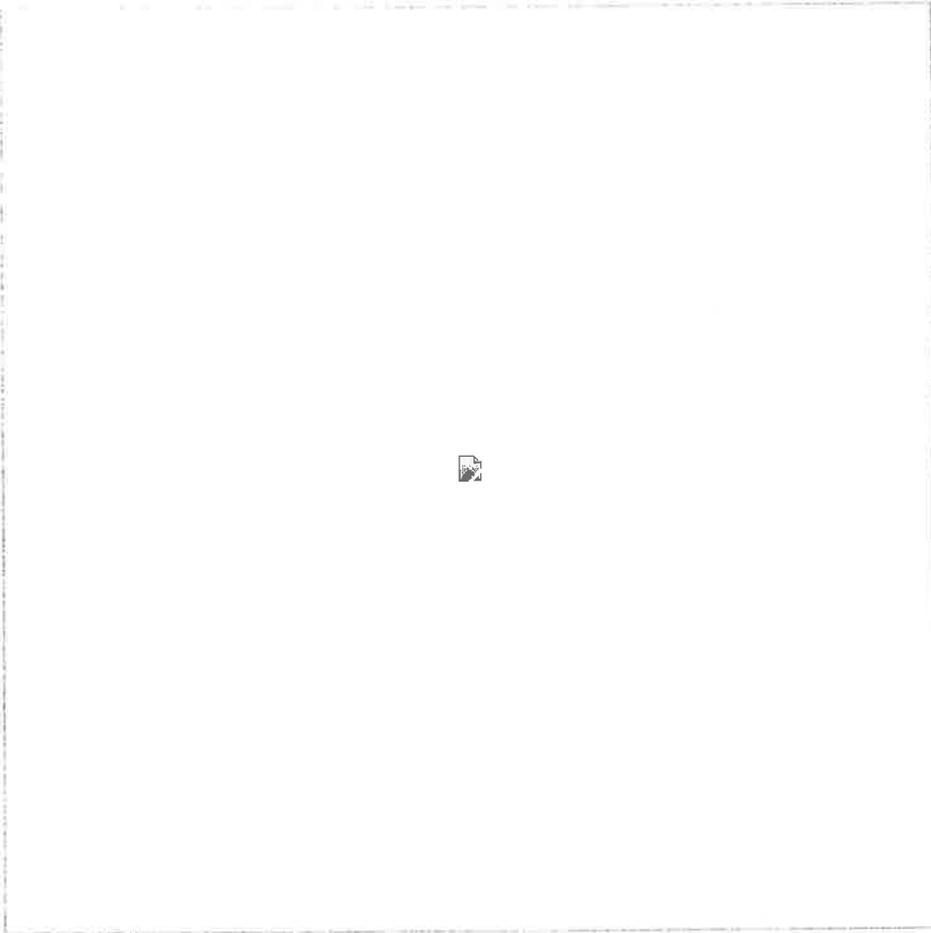
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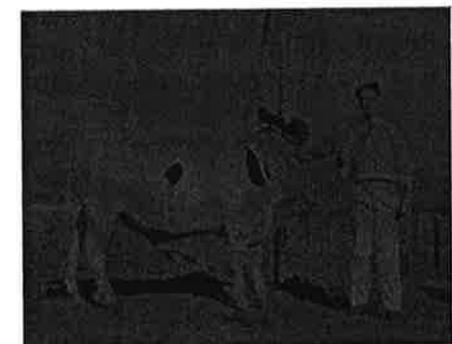
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Archives: Check out our coolest old Omaha photos

State prison facilities in recent months have hovered at about 150 percent of capacity, holding about 1,600 more inmates than their 3,175 capacity.

Prison rules give officials fairly broad power to take away good time. Minor offenses, such as poor sanitation or swearing, could be punished with up to an extra month in prison.

But in practice, records show, good time is more likely to be taken away for serious offenses. Escape attempts prompted one of the highest rates, with good time removed in 89 percent of cases; 61 percent of assault charges led to good time losses.

Prisoners who were in "violation of regulations," the most common rule broken, lost good time less than 1 percent of the time.

Smith said that shows prison officials are careful about meting out the best punishment for the crime.

"We could take good time away for not making their bed," Smith said. "Not sure that makes a lot of sense."

Smith said the low rate of good-time punishments is not a product of overcrowding in the prison system. Punishments are based only on the facts of each case, she said.

But in February 2011, then-Corrections Director Houston testified in support of a bill that would let inmates earn extra good time off their sentences.

"This provision has the potential to lower the prison population and therefore reduce costs," he told the Legislature's Judiciary Committee. "I believe this bill is a positive step in managing both the behavior and the size of the inmate population."

The testimony came amid a state budget-cutting effort, shortly after Houston told legislators that his department could save \$15 million by speeding up the release of inmates via parole.

Sen. Heath Mello of Omaha, who heads the Legislature's budget-writing Appropriations Committee, said it's not hard to conclude that the rare removal of good time was related to an effort to alleviate prison overcrowding.

Lincoln Sen. Colby Coash, a member of the Judiciary Committee, said he wants to hear from corrections officials about how good time and denial of good time are viewed within the department. He said it seems that good time should be removed more often, especially in cases of violent criminals.

"They're not using the tool they asked for, and that's the concerning piece for me," he said. "It's to manage the inmates who are doing their time well, appropriately. But it's also to manage the people who continue to show danger, like Nikko."

Sen. Ernie Chambers said he would "stand like the Rock of Gibraltar" against any changes in good time. He said he was pleased that statistics show it is rarely removed.

Twenty years ago, Chambers said, corrections officials used it arbitrarily and unfairly as a "bludgeon or a club" to keep inmates in prison long after they should have been released. That led to the 1992 legislation that standardized good time: one day per day spent in prison.

Chambers said the main issue in the Nikko Jenkins' case was prison officials' failure to provide proper mental health treatment and re-socialization for him, despite warnings and several requests. The problem isn't whether good time is taken away, he said.

"Inmates are dehumanized and become the scapegoats any time there's a breakdown in the system," Chambers said.

Bakewell, the retired warden, said concerns raised by Chambers and others two decades ago prompted the department to appoint hearing officers specifically to decide disciplinary cases, rather than rotating the job. That led to a standardization of punishment, he said, so inmates who committed the same offenses got the same punishments.

State lawmakers are now looking to the governor, who appoints the director of corrections, to come forward with a plan to revamp good time and address the overcrowded prisons.

Mello, in a letter to Heineman last week, said the state faces the possibility of spending \$150 million on a new prison or it could risk a federal court order to release "moderate to high-risk offenders" to alleviate overcrowding.

He wrote that the state has an Oct. 23 deadline for submitting a request for a supplemental appropriation to build a new prison or increase funding to alternatives to incarceration, such as probation, parole or drug courts.

"We see this crisis coming now. We need to deal with it now," Mello said in an interview. "We need to see the executive branch lead on this issue."

State Sen. Brad Ashford of Omaha, who has launched a study of what he called a crisis of overcrowded prisons, said he is concerned that the Governor's Office is



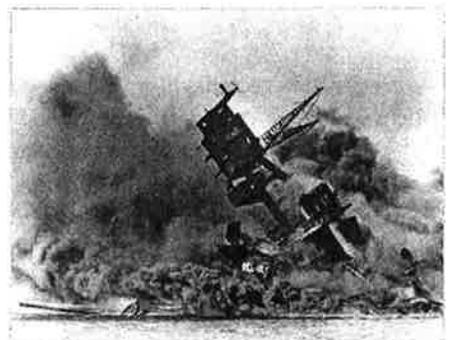
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On 73rd anniversary of attack, a salute to Pearl Harbor survivors

Davis: Nebraskan showcases state's beauty

"disengaging" from that process.

A representative of the governor's Policy Research Office and the head of the State Crime Commission attended a meeting of Ashford's group in August, but they indicated that they cannot attend the next meeting on Oct. 4. Ashford said he also wonders whether corrections officials will attend.

He says he wants to explore creating a new commission, independent of the governor, to better coordinate and oversee the three agencies that handle convicted felons: probation, corrections and parole.

"We can't wait for the appointment of a new director," Ashford said.

He said he's willing to look at changes in good-time rules but wants to hear from corrections experts about whether forcing hardened criminals to earn it would really make the public safer.

"There are no easy answers to this situation," Ashford said. "I really think it's a much deeper problem (than good time)."

How inmates can lose good time

Prison rules and regulations outline how much good time can be taken away for a variety of infractions. Here's a sampling.

Up to 365 days:

Any time someone is injured.

Up to three Months:

(If no one is injured)

- » Mutinous actions
- » Possession of weapons or flammable materials
- » Escape
- » Refusal to submit to a search
- » Drug abuse

Up to a month and 15 days:

- » Bribery
- » Cruelty to animals
- » Sexual assault
- » Destruction of property worth \$100 to \$500
- » Disobeying an order

Up to one month:

- » Flare of tempers
- » Receiving unauthorized articles
- » Swearing
- » Destruction of property worth less than \$100



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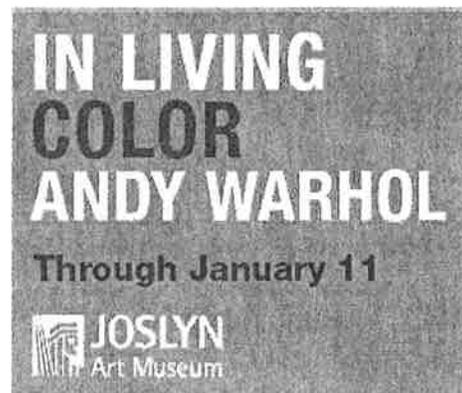
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	ADMINISTRATIVE REGULATION Department of Correctional Services State of Nebraska	NUMBER 201.05	PAGE 1 of 13
		INMATE CLASSIFICATION and ASSIGNMENT – SPECIAL MANAGEMENT INMATES	

This Administrative Regulation is to be made available in law libraries or other inmate resource centers.

- EFFECTIVE: March 1, 1980
- REVISED: August 15, 2007
- REVISED: October 8, 2007
- REVISED: October 22, 2008
- REVISED: July 26, 2009
- REVISED: July 28, 2010
- REVISED: July 27, 2011
- REVISED: August 24, 2011
- REVISED: August 13, 2012
- REVISED: August 2, 2013
- REVISED: October 11, 2014

SUMMARY of REVISION/REVIEW
Changed Administrative Segregation to Restrictive Housing throughout

APPROVED:



MICHAEL L. KENNEY, Director
Nebraska Department of Correctional Services

	ADMINISTRATIVE REGULATION Department of Correctional Services State of Nebraska	NUMBER 201.05	PAGE 2 of 13
		INMATE CLASSIFICATION and ASSIGNMENT – SPECIAL MANAGEMENT INMATES	

PURPOSE

Proper handling of special management inmates is essential to maintain a safe, secure and humane environment for inmates, staff and the public. This policy establishes the policies and procedures governing special management inmates in the custody of the Nebraska Department of Correctional Services (NDCS).

- I. DESIGNATION OF RESTRICTIVE HOUSING UNITS AND ESTABLISHMENT OF POLICIES AND PROCEDURES
 - A. The Director shall designate Restrictive Housing units to house special management inmates.
 - B. This Administrative Regulation shall constitute the Department's policy and procedures for classifying inmates to a special management status and for review of inmates in Restrictive Housing.

- II. SPECIAL MANAGEMENT INMATES INCLUDE, BUT ARE NOT LIMITED TO, INMATES IN ONE OR MORE OF THE FOLLOWING CATEGORIES:
 - A. Disciplinary Segregation - The temporary confinement of an inmate after the inmate has been found guilty of a violation of the Code of Offenses by a disciplinary committee pursuant to the procedures in Rule Six (6) of the Department's Administrative Rules and Regulations.
 - B. Death Row - The confinement of inmates sentenced to the death penalty.
 - C. Court Imposed - The temporary confinement of an inmate for the period of time ordered by the sentencing court.
 - D. Immediate Segregation - The immediate confinement of an inmate to protect staff, other inmate(s), the inmate being confined, or to maintain the security, management and control of the institution pending a classification or disciplinary action and/or investigation.
 - E. Restrictive Housing - The removal of an inmate from general population for an indefinite period of time to maintain order and security within the institution. Restrictive Housing is not disciplinary segregation. Restrictive Housing includes:
 1. Administrative Confinement - The confinement of an inmate to maintain the safety, security and good order of the institution.
 2. Intensive Management - The confinement of an inmate when the inmate's demonstrated behavior presents a high risk of physical danger to anyone with whom the inmate comes into contact.
 3. Protective Custody - The confinement of an inmate for an indefinite period of time to protect the inmate from real or perceived threat of harm by others.
 4. Transition Confinement - The confinement of an inmate in a structured transition program.

	ADMINISTRATIVE REGULATION Department of Correctional Services State of Nebraska	NUMBER 201.05	PAGE 3 of 13
		INMATE CLASSIFICATION and ASSIGNMENT – SPECIAL MANAGEMENT INMATES	

III. IMMEDIATE SEGREGATION PROCEDURES

- A. The Warden/designee may order the immediate segregation of an inmate.
- B. Reasons for immediate segregation include, but are not limited to:
 - 1. A hearing is pending before a Disciplinary Committee.
 - 2. An investigation is pending regarding an alleged violation of the Code of Offenses.
 - 3. An investigation or trial is pending regarding a criminal act.
 - 4. It is necessary for the inmate's protection.
 - 5. The inmate requested protection.
 - 6. A transfer is pending.
 - 7. A classification hearing is pending.
 - 8. For the safety and security of the institution.
- C. Reviews of Immediate Segregation
 - 1. If the immediate segregation is for more than 24 hours, a review must be held within 72 hours of the inmate's placement on immediate segregation.
 - 2. The Unit Classification Committee, or other individual(s) designated by the Warden shall conduct the review.
 - 3. When an inmate is placed in immediate segregation, staff shall give the inmate a copy of the Notice of Immediate Segregation (DCS-A-adm-028) (Attachment A).
 - 4. After the review, staff shall give the inmate a copy of the Immediate Segregation Review (DCS-A-adm-051) (Attachment B).
 - 5. The period of time spent by the inmate on Immediate Segregation shall be included as part of the new or subsequent Restrictive Housing commencement date.

Immediate segregation cannot last for more than thirty (30) continuous days after the seventy-two (72) hour review for immediate segregation.

	ADMINISTRATIVE REGULATION Department of Correctional Services State of Nebraska	NUMBER 201.05	PAGE 4 of 13
		INMATE CLASSIFICATION and ASSIGNMENT – SPECIAL MANAGEMENT INMATES	

IV. A.R. 201.05 INMATE CLASSIFICATION AND ASSIGNMENT – SPECIAL MANAGEMENT INMATES

Restrictive Housing Authorities

A. Unit Classification Committee

1. Initiates all classification actions involving inmates on Restrictive Housing.
2. Monitors the personalized plan for each inmate in Restrictive Housing.
3. Conducts Restrictive Housing Status Reviews of each inmate on Restrictive Housing.
4. Conducts reviews of an inmate's continuation on Restrictive Housing at least every six months.

B. Institutional Classification Committee reviews and refers to the Warden all classification recommendations from the Unit Classification Committee.

C. Warden

1. Approves assignment to, continuation of, or removal from all Restrictive Housing (Administrative Confinement, Intensive Management, Protective Custody and Transition Confinement).

NOTE: Copies of all Transition Confinement actions (assignment to, continuation of or removal from) shall be forwarded to the NDCS Classification Manager for tracking purposes.

2. Approves all reports of weekly and bimonthly reviews conducted on inmates on Restrictive Housing.

D. Restrictive Housing Review Board

The Restrictive Housing Review Board reviews all decisions to consider an inmate on Intensive Management, Administrative Confinement and involuntary Protective Custody after forty-five days (45) and decides inmate appeals from a Warden's decision to classify an inmate to, to continue an inmate on, or remove an inmate from Restrictive Housing.

V. RESTRICTIVE HOUSING - CONSIDERATIONS

When considering the assignment to, continuation of, or removal from Restrictive Housing, the decision maker(s) must consider, but is not limited to:

A. The following items identified on the NDCS Restrictive Housing Checklist (Attachment H):

1. The threat potential to staff and/or inmates posed by the inmate.

	ADMINISTRATIVE REGULATION Department of Correctional Services State of Nebraska	NUMBER 201.05	PAGE 5 of 13
		INMATE CLASSIFICATION and ASSIGNMENT – SPECIAL MANAGEMENT INMATES	

2. The behaviors leading to the inmate's referral or placement on Restrictive Housing status.
 3. The inmate's history of or lack of predatory behavior.
 4. The inmate's history of or lack of assaultive behavior.
 5. The inmate's history of or lack of escape/attempted escapes.
 6. The inmate's history of or lack of membership in a criminal threat group.
 7. The injuries the inmate may have caused to others.
 8. The inmate's use of weapon(s) in this or prior incidents.
 9. The inmate's documented mental health issues.
 10. The inmate's prior criminal history.
 11. The inmate's prior disciplinary record (misconduct reports, etc.).
 12. The inmate's history of or lack of illicit drug use within the NDCS.
 13. The programming that the inmate has or has not completed.
 14. The prior classification decisions involving the inmate's status.
 15. The inmate's documented behavior (incident reports, etc.) and interactions with staff and other inmates.
 16. The professional judgment and recommendations of NDCS staff regarding the classification of the inmate.
 17. The real or perceived threat of harm to the inmate from other inmates.
 18. The inmate's statements regarding admission of prior actions, a commitment to changing behavior, and accountability for prior acts.
 19. Any other information regarding the inmate that the classification authority deems appropriate.
- B. The inmate's total score on the Initial Classification Rating for Administrative Confinement/Intensive Management/Transition Confinement Consideration or the Reclassification Index for Administrative Confinement/Intensive Management/Transition Confinement form.
1. For initial placement on Restrictive Housing, excluding Protective Custody, the Initial Classification Rating for Administrative Confinement/Intensive Management/Transition Confinement Consideration form shall be completed (Attachment E).
 2. For reviews of placement on Restrictive Housing, excluding Protective Custody, the Reclassification Rating for Administrative

	ADMINISTRATIVE REGULATION Department of Correctional Services State of Nebraska	NUMBER 201.05	PAGE 6 of 13
		INMATE CLASSIFICATION and ASSIGNMENT – SPECIAL MANAGEMENT INMATES	

Confinement/Intensive Management/Transition Confinement Consideration form shall be completed (Attachment F).

3. Inmates who request voluntary placement on protective custody will complete and sign the Inmate Request for Voluntary Confinement on Protective Custody form (Attachment J). Inmates that request to be removed from voluntary protective custody status will be required to complete and sign the Inmate Request for Removal from Voluntary Protective Custody form (Attachment K). Inmates who refuse placement on protective will be required to complete and sign the Inmate Refusal of Protective Custody form (Attachment L).

VI. RESTRICTIVE HOUSING – RESTRICTIVE HOUSING STATUS REVIEWS

- A. The Unit Classification Committee shall conduct formal reviews of the status of each Restrictive Housing inmate every seven days until sixty days after the inmate has been placed in Restrictive Housing.
- B. The Unit Classification Committee shall conduct formal reviews of the status of each Restrictive Housing inmate every two weeks after sixty continuous days of Restrictive Housing.
- C. Restrictive Housing inmates shall be given notice of the Restrictive Housing Status Review and have an opportunity to appear before the Unit Classification Committee once a month at the Restrictive Housing Status Review.
- D. The Unit Classification Committee shall make a written record of the Restrictive Housing Status Reviews.
- E. The written record of the Restrictive Housing Status Review shall be submitted to the Warden/designee.
- F. The Warden/designee shall review the record of the Restrictive Housing Status Review for final approval or return it to the Unit Classification Committee for further action.

VII. RESTRICTIVE HOUSING– PLACEMENT ON AND REVIEW OF RESTRICTIVE HOUSING

- A. Written Notice
 1. Unit Staff shall give the inmate written notice of classification hearing on the inmate's placement, continuation or removal from Restrictive Housing. This notice shall state:
 - a. The reasons for considering placing the inmate on Restrictive Housing, for the continuation of the inmate on Restrictive Housing or for the removal of the inmate from Restrictive Housing.
 - b. The time, place and date of the classification hearing.

	ADMINISTRATIVE REGULATION Department of Correctional Services State of Nebraska	NUMBER 201.05	PAGE 7 of 13
		INMATE CLASSIFICATION and ASSIGNMENT – SPECIAL MANAGEMENT INMATES	

- c. The Notice/Waiver of Classification Hearing Form (DCS-A-cla-006) (Attachment G) shall be used.
- 2. Unit Staff shall provide the inmate with a copy of the Reclassification Narrative Form (DCS-A-cla-020-PC) (Attachment D). The Reclassification Narrative Form must provide sufficient information to enable the inmate to prepare a response. If the recommendation is to place the inmate on or continue Restrictive Housing, the Reclassification Narrative Form must include goals that could enhance the inmate being classified to a less restrictive status in the future.
- 3. The inmate shall have at least forty-eight hours notice of the classification hearing.
- 4. Staff shall place a copy of the notice in the inmate's master file.
- B. Restrictive Housing - Classification/Review Hearings
 - 1. The hearing shall be impartial.
 - 2. The Unit Classification Committee will conduct the hearing. The Unit Classification Committee can recommend that:
 - a. The inmate be placed on Restrictive Housing.
 - b. The inmate be continued on Restrictive Housing.
 - c. The inmate be removed from Restrictive Housing.
 - 3. The Unit Classification Committee shall hold a hearing on whether an inmate should continue or be removed from Restrictive Housing according to the following schedule:
 - a. Initial placements on intensive management, administrative confinement or involuntary protective custody status shall be reviewed after completion of the first forty-five (45) days. Initial placements on voluntary protective custody status shall be reviewed after completion of the first ninety days.
 - b. Inmates assigned to intensive management, administrative confinement, or involuntary protective custody shall be reviewed at least every four (4) months after the inmate's first forty-five (45) day review.
 - c. Inmates assigned to voluntary protective custody status shall be reviewed at least annually after the inmate's first six month review hearing.
 - d. Inmates assigned to transition confinement status shall be reviewed at every six months (or sooner if program is completed).

	ADMINISTRATIVE REGULATION Department of Correctional Services State of Nebraska	NUMBER 201.05	PAGE 8 of 13
		INMATE CLASSIFICATION and ASSIGNMENT – SPECIAL MANAGEMENT INMATES	

4. The inmate may request a continuance of the hearing by making a written request for additional time to prepare a response.
5. If an inmate is illiterate or the issues are so complex that the inmate may not be able to present a response, the inmate may be given a staff representative.
6. If the inmate is unable to speak or understand English, the inmate may be given a staff interpreter.
7. During the hearing, the Unit Classification Committee shall inform the inmate of any relevant information being considered.
8. The inmate shall have the opportunity to refute the information presented and to submit any pertinent information.
9. The content of psychiatric, psychological and mental health reports will not be disclosed to the inmate.
10. The identity of a confidential informant will not be disclosed to the inmate.
11. After the hearing, the inmate, the interpreter and the staff representative may be asked to leave the hearing room while the Unit Classification Committee deliberates. The committee shall complete the Restrictive Housing Checklist (DCS-A-clS-019) (Attachment H).
12. If the majority of the members of the Unit Classification Committee determine that the inmate should be classified to Restrictive Housing, the committee shall so classify the inmate, pending the decision of the Warden.
13. If the majority of the Unit Classification Committee determines that the inmate should continue on Restrictive Housing, the inmate's classification shall continue to be Restrictive Housing, pending the decision of the Warden.
14. If the majority of the members of the Unit Classification Committee determine that the inmate should be removed from Restrictive Housing, the inmate shall continue on Restrictive Housing, pending the decision of the Warden.
15. The Unit Classification Committee shall complete the appropriate classification action form. The classification action form, a copy of the consideration checklist, the Initial Classification Rating Form or Reclassification Rating Form, any information submitted by the inmate and any other documents relied upon by the Unit Classification Committee will be submitted to the Facility Classification Manager.
16. Requests for Transition Confinement status may be considered every six months. Exceptions must be approved by the Warden. Long Term Protective Custody inmates are eligible to participate in Transition Confinement.

	ADMINISTRATIVE REGULATION Department of Correctional Services State of Nebraska	NUMBER 201.05	PAGE 9 of 13
		INMATE CLASSIFICATION and ASSIGNMENT – SPECIAL MANAGEMENT INMATES	

C. Restrictive Housing – Institutional Classification Committee and Warden.

1. The Institutional Classification Committee and the Warden shall review the Unit Classification Committee's recommendation.
2. The Institutional Classification Committee shall make recommendations to the Warden.
3. The Warden shall decide what classification action should be taken on all Restrictive Housing status classification decisions.
4. The Warden's decision shall be in writing and shall explain the reasons for the Warden's decision and include references to the information relied upon by the Warden.
5. The inmate shall be given a copy of the Warden's decision.
6. The decision of the Warden shall be final unless the inmate appeals the Warden's decision to the Restrictive Housing Review Board.
7. If the inmate appeals the Warden's decision, said decision shall go into effect and remain in effect while any appeals are pending.

D. Restrictive Housing – Restrictive Housing Review Board

1. Inmate Appeals of Restrictive Housing Actions. All decisions of the Warden to continue an inmate on intensive management, administrative confinement and involuntary protective custody after forty-five (45) days shall be automatically reviewed by the Restrictive Housing Review Board. The classification packet will be forwarded to the Classification Manager/Designee to initiate this review. This action is separate from the appeal process, however, the Restrictive Housing Review Board has the authority to affirm, reverse, modify or remand the matter (with directions) to the Warden. The decision of the Warden will remain in effect while this review is pending.
 - a. The inmate appealing the Warden's decision must submit the appeal within 15 calendar days of the day the inmate received a copy of the Warden's decision. Appeals must be submitted on a NDCS Classification Appeal Form (DCS-A-clc-021-Attachment I)
 - b. The inmate shall submit the appeal to a member of the unit staff.
 - c. The day that the appeal is first received by any member of the unit staff shall be the day the appeal was submitted for purposes of determining if the appeal was filed within 15 calendar days of the inmate's receipt of the Warden's decision.
 - d. The notice of appeal shall identify the decision being appealed, the date of the decision, the date on which the inmate received a copy of

	ADMINISTRATIVE REGULATION Department of Correctional Services State of Nebraska	NUMBER 201.05	PAGE 10 of 13
		INMATE CLASSIFICATION and ASSIGNMENT – SPECIAL MANAGEMENT INMATES	

the decision and the reasons why the inmate contends the decision was incorrect.

e. A unit case manager shall submit the appeal and the record to the Classification Manager in Central Office within 10 working days after receiving the notice of appeal from the inmate.

f. The record submitted to the Restrictive Housing Review Board shall include:

- 1) The Classification Appeal form (Attachment I)
- 2) The Reclassification Action Form (DCS-A-clc-007) (Attachment C)
- 3) Reclassification Narrative Form (DCS-A-clc-PC) (Attachment D)
- 4) Notice/Waiver of Classification Hearing (DCS-A-clc-006) (Attachment G)
- 5) The Restrictive Housing Checklist (DCS-A-clc-019) (Attachment H)
- 6) If applicable, the Initial Classification Rating for Administrative Confinement/Intensive Management/Transition Confinement form (Attachment E) or the Reclassification Rating for Administrative Confinement/Intensive Management/Transition Confinement form (Attachment F).
- 7) A Central Monitoring Statement
- 8) The written decision of the Unit Classification Committee
- 9) The written decision of the Warden
- 10) Any other documents considered by the Unit Classification Committee
- 11) Any documents the inmate submitted to the Unit Classification Committee.

2. Restrictive Housing Review Board Procedures

- a. Three members of the Restrictive Housing Review Board shall review each appeal. A majority of these members must agree on the decision.
- b. None of the Restrictive Housing Review Board members considering an appeal can be from the same institution as the inmate.

	ADMINISTRATIVE REGULATION Department of Correctional Services State of Nebraska	NUMBER 201.05	PAGE 11 of 13
		INMATE CLASSIFICATION and ASSIGNMENT – SPECIAL MANAGEMENT INMATES	

- c. The Classification Manager/Designee will coordinate the cases to be reviewed by the Restrictive Housing Review Board.
- d. The members of the Restrictive Housing Review Board shall confer as necessary before deciding the appeal.
- e. The Restrictive Housing Review Board shall issue a written decision with an explanation of the reasons for the decision.
- f. The Restrictive Housing Review Board shall issue its decision within 25 working days after the receipt of the appeal.
- g. The Restrictive Housing Review Board may affirm, reverse, modify or remand the matter (with directions) to the Warden.
- h. Copies of the Restrictive Housing Review Board's decision shall be sent to the Warden and the inmate. A final copy of the decision shall be placed in the inmate's master file.
- i. The Restrictive Housing Review Board's decision may be appealed to the Director's Review Committee by either the Warden or the inmate.
- j. If the decision of the Restrictive Housing Review Board is appealed, the Warden's decision will remain in effect while the appeal is pending.

3. Restrictive Housing Review Board Procedures

- a. The Classification Manager/Designee will coordinate the cases to be reviewed by the Restrictive Housing Review Board.

The Ombudsman's Office may participate in the appeals process by notifying the Classification Manager/Designee of its intent to submit verbal and/or written mitigation for consideration. Notice of the intent to present mitigation to be considered must be provided to the Classification Manager/Designee within fifteen (15) working days of the date the inmate appeal was received by the Classification Manager/Designee.

- b. The members of the Restrictive Housing Review Board shall confer as necessary before deciding the appeal.

In the event that the Ombudsman's Office requests to present verbal mitigation for consideration to the Restrictive Housing Review Board, they can provide this information at the time of the inmate's next review. If the issue is urgent, the Restrictive Housing Review Board will schedule a meeting for this purpose. Said meeting will be conducted in a timely manner so as to allow the Restrictive Housing Review Board to issue its decision within the time limits established by this Administrative Regulation.

	ADMINISTRATIVE REGULATION Department of Correctional Services State of Nebraska	NUMBER 201.05	PAGE 12 of 13
		INMATE CLASSIFICATION and ASSIGNMENT – SPECIAL MANAGEMENT INMATES	

c. Copies of the Restrictive Housing Review Board's decision shall be sent to the Warden the inmate and the Ombudsman's Office if said office participated in the appeals process. A final copy of the decision shall be placed in the inmate's master file.

E. Appeals of the Restrictive Housing Review Board Decisions

1. The Warden or the inmate may appeal a decision of the Restrictive Housing Review Board to the Director's Review Committee. Inmates must submit appeals on a NDCS Classification Appeal Form (DCS-A-clc-021-Attachment 1)
3. The appeal must be received by the Director's Review Committee within fifteen working days of receipt of the decision of the Restrictive Housing Review Board.
4. Inmates may submit appeals to the Director's Review Committee through their unit staff who will forward it by utilizing interoffice mail.
5. The appeal shall be in writing and shall identify the decision being appealed, the date of the decision, the date on which the inmate or the Warden received a copy of the decision and the reasons why the inmate or Warden disagrees with the decision of the Restrictive Housing Review Board.
6. The Director's Review Committee shall issue its decision within 25 working days after the receipt of the appeal.

F. Appeals of any Director's Review Committee Decisions may be made by the inmate to the Director. The Director shall issue a decision within 25 working days after the receipt of the appeal. Appeals should be submitted in letter form.

VIII. MENTAL HEALTH CONSULTATIONS - A qualified mental health professional shall conduct a personal interview of any special management inmate in Restrictive Housing for more than thirty days and prepare a written report.

REFERENCES:

I. ATTACHMENTS

- A. Notice of Immediate Segregation Form
- B. Immediate Segregation Review Form
- C. Reclassification Action Form (Male and Female)
- D. Reclassification Narrative Form
- E. Initial Classification Rating for Administrative Confinement/Intensive Management/Transition Confinement Consideration Form

	ADMINISTRATIVE REGULATION Department of Correctional Services State of Nebraska	NUMBER 201.05	PAGE 13 of 13
		INMATE CLASSIFICATION and ASSIGNMENT – SPECIAL MANAGEMENT INMATES	

- F. Reclassification Rating for Administrative Confinement/Intensive Management/Transition Confinement Consideration Form
 - G. Notice/Waiver of Classification Hearing Form
 - H. Restrictive Housing Checklist
 - I. Classification Appeal Form
 - J. Inmate Request for Voluntary Confinement on Protective Custody Form
 - K. Inmate Request for Removal from Voluntary Protective Custody Form
 - L. Inmate Refusal of Protective Custody
 - M. Restrictive Housing Flowchart
- II. ACA STANDARDS – Standards for Adult Correctional Institutions (ACI) (4th edition): 4-4235, 4-4295.

