

Department of Correctional Services
Special Investigative Committee of the Legislature

Senators:

Steve Lathrop – Chair

Les Seiler – Vice-chair

Kate Bolz

Ernie Chambers

Bob Krist

Heath Mello

Paul Schumacher

Hearing date: 8/8/2014

Testifier:

Former Director Bob Houston

From: Houston, Bob
Sent: Saturday, December 19, 2009 8:44 AM
To: Dahm, John
Subject: RE: Incident During Funeral Travel Order

Thanks, John

Great performance yesterday!

From: Dahm, John <John.Dahm@nebraska.gov>
Sent: Thursday, December 17, 2009 9:48 PM
To: Houston, Bob <Bob.Houston@nebraska.gov>; Hopkins, Frank <Frank.Hopkins@nebraska.gov>
Cc: Slemek, Tim <Tim.Slemek@nebraska.gov>; Hansen, Brad <Brad.Hansen@nebraska.gov>
Subject: Incident During Funeral Travel Order

This evening we took inmate _____ to funeral at a church in Omaha. Also attending the funeral was _____ Nikko Jenkins #59478 who was escorted by TSCI staff.

About 10 minutes prior to the start of the services there was an incident between Nikko and his escorts as they were coming out of a restroom in the church basement _____ and escorting NCCW staff were also in the basement. _____ broke away from her NCCW escorts and attempted to interfere with TSCI staff who were trying to control Nikko. _____ refused orders to stop and had to be taken down by our staff.

Once we gained control over _____ we terminated the travel order and returned her to NCCW.

Our staff was not injured in the incident. _____ is complaining of ankle and wrist injuries. She was checked by the NCCW nurse upon arrival at the facility. She was then placed in segregation.

John J. Dahm, Warden
 NCCW

From: Houston, Bob
Sent: Saturday, December 19, 2009 8:47 AM
To: Hansen, Brad; Hopkins, Frank; Wayne, Larry; Smith, Dawn Renee
Subject: RE: Incident during Travel Order - TSCI

Folks,

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

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

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

From: Houston, Bob
Sent: Sunday, December 20, 2009 11:58 PM
To: Wayne, Larry
Subject: RE: Incident during Travel Order - TSCI

Indeed. Let's leave as is for now.

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

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

Sent from my Windows Mobile phone

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

Folks,

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

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

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From: Houston, Bob
Sent: Monday, December 21, 2009 12:00 AM
To: Slemek, Tim
Subject: RE: Incident During Funeral Travel Order

Thanks, Tim.

See you

From: Slemek, Tim <Tim.Slemek@nebraska.gov>
Sent: Sunday, December 20, 2009 9:15 AM
To: Dahm, John <John.Dahm@nebraska.gov>; Houston, Bob <Bob.Houston@nebraska.gov>; Hopkins, Frank <Frank.Hopkins@nebraska.gov>
Cc: Hansen, Brad <Brad.Hansen@nebraska.gov>
Subject: RE: Incident During Funeral Travel Order

Warden Dahm,

NCCW had earlier been advised that TSCI would not be transporting Nikko Jenkins to the same funeral. I should have confirmed that with TSCI.

I think we need to develop a procedure for each facility to communicate with the others when we are taking inmates to funerals in the community where inmate family members may be in contact with each other.

Tim Slemek, Asst. Warden II
 Nebraska Correctional Center for Women
 362-3317 ext. #226
tim.slemek@nebraska.gov

From: Dahm, John
Sent: Thursday, December 17, 2009 9:48 PM
To: Houston, Bob; Hopkins, Frank
Cc: Slemek, Tim; Hansen, Brad
Subject: Incident During Funeral Travel Order

This evening we took Inmate _____ to her grandfather's funeral at a church in Omaha. Also attending the funeral was her brother Nikko Jenkins #59478 who was escorted by TSCI staff.

About 10 minutes prior to the start of the services there was an incident between Nikko and his escorts as they were coming out of a restroom in the church basement and escorting NCCW staff were also in the basement. Nikko broke away from her NCCW escorts and attempted to interfere with TSCI staff who were trying to control Nikko. Nikko refused orders to stop and had to be taken down by our staff.

Once we gained control over _____ we terminated the travel order and returned her to NCCW.

Our staff was not injured in the incident. [redacted] s complaining of ankle and wrist injuries. She was checked by the NCCW nurse upon arrival at the facility. She was then placed in segregation.

John J. Dahm, Warden
NCCW

From: Houston, Bob
Sent: Wednesday, December 23, 2009 11:35 AM
To: Hansen, Brad
Subject: RE: Stephen Wilhelmsen

Thanks!

From: Hansen, Brad <Brad.Hansen@nebraska.gov>
Sent: Tuesday, December 22, 2009 1:50 PM
To: Houston, Bob <Bob.Houston@nebraska.gov>
Subject: FW: Stephen Wilhelmsen

Per your request

Brad Hansen
 Emergency Management Supervisor
 Nebraska Department of Corrections
 Office # 402-479-5617
 Cell Phone : _____

From: Goracke, Teresa
Sent: Tuesday, December 22, 2009 1:48 PM
To: Hansen, Brad
Cc: Houston, Bob
Subject: RE: Stephen Wilhelmsen

Stephen Wilhelmsen's home phone number is^ _____ He works 2nd shift with
 Tuesday/Wednesday off
 Merry Christams and Happy New Year!!!! And of course, GO BIG RED!

Captain Teresa Goracke
 Omaha Correctional Center
Teresa.Goracke@Nebraska.gov

From: Hansen, Brad
Sent: Tuesday, December 22, 2009 1:29 PM
To: Shortridge, Karen; English, Tom; Goracke, Teresa; West, Charles
Subject: Stephen Wilhelmsen

Mr. Houston would like to give Mr. Wilhelmsen a call since he was struck by inmate Nikko Jenkins. I need his home phone number and shift he works and his days off. Thanks for your help

Brad Hansen
 Emergency Management Supervisor
 Nebraska Department of Corrections
 Office # 402-479-5617
 Cell Phone : _____

From: Houston, Bob
Sent: Wednesday, December 23, 2009 11:45 AM
To: Goracke, Teresa
Subject: RE: Stephen Wilhelmsen

We talked.....Steve is a great guy and a true professional!

Thanks Teresa

Bob

From: Goracke, Teresa <Teresa.Goracke@nebraska.gov>
Sent: Tuesday, December 22, 2009 1:47 PM
To: Hansen, Brad <Brad.Hansen@nebraska.gov>
Cc: Houston, Bob <Bob.Houston@nebraska.gov>
Subject: RE: Stephen Wilhelmsen

Stephen Wilhelmsen's home phone number is _____. He works 2nd shift with
 Tuesday/Wednesday off
 Merry Christams and Happy New Year!!!! And of course, GO BIG RED!

Captain Teresa Goracke
 Omaha Correctional Center
Teresa.Goracke@Nebraska.gov

From: Hansen, Brad
Sent: Tuesday, December 22, 2009 1:29 PM
To: Shortridge, Karen; English, Tom; Goracke, Teresa; West, Charles
Subject: Stephen Wilhelmsen

Mr. Houston would like to give Mr. Wilhelmsen a call since he was struck by inmate Nikko Jenkins. I need his home phone number and shift he works and his days off. Thanks for your help

Brad Hansen
 Emergency Management Supervisor
 Nebraska Department of Corrections
 Office # 402-479-5617
 Cell Phone : _____

From: Houston, Bob
Sent: Wednesday, September 04, 2013 1:12 PM
To: Carmichael, Mary
Subject: Re: FW: DCS ID: 59478 -- NIKKO JENKINS

Thanks, Mary, I responded to by advising him that goodtime is a matter of State law, not Agency policy.

Sent from my Samsung Galaxy Tab 10.1
 "Carmichael, Mary" <Mary.Carmichael@nebraska.gov> wrote:
 Don't know why I got this.

Mary Carmichael
 NDCS Materiel Administrator
 Department of Correctional Services
 Procurement Division

Phone: 402-479-5717 - Office
 Cell
 402-479-5863 - FAX

"Press on...your defining moment may arrive just when you feel surrounded by adversity." ~ David Cottrell
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From: _____
Sent: Wednesday, September 04, 2013 11:04 AM
To: Carmichael, Mary
Subject: DCS ID: 59478 -- NIKKO JENKINS

This message is intended for Robert P. Houston:

Mr. Houston,
 I'm a close friend of Andrea and Ryan Kruger. I'm just curious as to your explanation and reasoning for why Nikko Jenkins was allowed to walk out of prison on July 30th and then proceed to murder four civilians in Omaha over a three week period? Can you please send me a detailed explanation as to the process of Jenkin's release before July 30th? I'm interested in LB 44 "The Good Time Law" and why anyone would possibly think Nikko Jenkins qualified for this, flawed, program. I could go on and on about how disgusted I am at our corrections department and the fact that this animal was allowed to murder my friend in cold blood. You and your department should be ashamed of yourselves. You owe Ryan, his three children and the rest of their families an explanation.

From: Carmichael, Mary
Sent: Wednesday, September 04, 2013 11:09 AM
To: Splndler, Robin; Kroeger, Concha; Houston, Bob; Smith, Dawn Renee
Subject: FW: DCS ID: 59478 -- NIKKO JENKINS

Don't know why I got this.

Mary Carmichael
NDCS Materiel Administrator
Department of Correctional Services
Procurement Division

Phone: 402-479-5717 - Office
Cell
402-479-5663 - FAX

"Press on...your defining moment may arrive just when you feel surrounded by adversity." ~ David Cottrell

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From: [mailto:_____]_____
Sent: Wednesday, September 04, 2013 11:04 AM
To: Carmichael, Mary
Subject: DCS ID: 59478 -- NIKKO JENKINS

This message is intended for Robert P. Houston:

Mr. Houston,
I'm a close friend of Andrea and Ryan Kruger. I'm just curious as to your explanation and reasoning for why Nikko Jenkins was allowed to walk out of prison on July 30th and then proceed to murder four civilians in Omaha over a three week period? Can you please send me a detailed explanation as to the process of Jenkin's release before July 30th? I'm interested in LB 44 "The Good Time Law" and why anyone would possibly think Nikko Jenkins qualified for this, flawed, program. I could go on and on about how disgusted I am at our corrections department and the fact that this animal was allowed to murder my friend in cold blood. You and your department should be ashamed of yourselves. You owe Ryan, his three children and the rest of their families an explanation.

From: Houston, Bob
Sent: Friday, August 30, 2013 11:43 AM
To: wayne.hudson@douglascounty-ne.gov; mark.foxall@douglascounty-ne.gov
Subject: Fwd: FW: Nikko Jenkins & Curtis Bradford
Attachments: 59478 JENKINS Intell Report.pdf; image001.png; Jenkins.eml; FW PDF.eml

Importance: High

Sent from my Samsung Galaxy Tab 10.1

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

Subject: FW: Nikko Jenkins & Curtis Bradford
 From: "Peterson, Jeff A" <Jeff.A.Peterson@nebraska.gov>
 To: "Houston, Bob" <Bob.Houston@nebraska.gov>
 CC:

Mr. Houston,

I have had a number of email conversations with OPD Sgt. Anna colon pertaining to Nikko Jenkins since his release on July 30, 2013, include sending an intell report to them and LPD on July 30, 2013 and again earlier this week. I also sent an intell report to Douglas County Sheriff pertaining to Jenkins.

Yesterday, Sgt. Colon asked for additional info pertaining to Jenkins. Since I was out of town for presentation and not able to dedicated time to it, I sent this to Capt. Connelly. Sgt. Colon had also asked for info on parolee report on _____ (both items are attached). Both were placed into custody last night. Please let me know if you have any questions or need any thing else. I will at the airport later this after noon may not be available at parts of the day/evening. Jeff

Jeff A. Peterson

Criminal/Intell Analyst

Nebraska Department of Correctional Services

Office: 4024795912

Cell: _____

From: Hanson, Doug
Sent: Tuesday, August 07, 2012 3:42 PM
To: Spindler, Robin
Subject: FW: Capacity Increase Spreadsheet
Attachments: Capital Construction-Capacity Increase (2012).xlsx

Robin, this is what I sent Chris this morning as well.

Doug Hanson
Facilities Engineering Manager
Department of Correctional Services
(402) 479-5742 (Office)
(402) 479-5842 (Fax)
doug.hanson@nebraska.gov

From: Hanson, Doug
Sent: Tuesday, August 07, 2012 7:37 AM
To: Peters, Chris
Subject: Capacity Increase Spreadsheet

Chris,

This should be the latest version, but I am working on the Need Statement and there may be some slight changes. Hope this helps.

Doug Hanson
Facilities Engineering Manager
Department of Correctional Services
(402) 479-5742 (Office)
(402) 479-5842 (Fax)
doug.hanson@nebraska.gov

DRAFT
CAPITAL CONSTRUCTION - CAPACITY INCREASE
June 1, 2012

FACILITY	PROJECT	CUSTODY LEVEL	NEW BEDS	Estimated COST	PROJECT COST	ANNUAL OP. COST	COMMENTS
	Update Strategic Capital Facilities Master Plan including Population Projection Study			\$225,000			Update of the 2006 Facilities Master Plan (CGL Plan) to identifying capacity need based on classification
NEW	600 Bed Minimum/Community Custody Facility	Minimum/Community	600	\$120,000	\$53,900,000	\$13,000,000	Potential location north of CCCL
TSCI	New 256 Bed Housing Unit Addition	Maximum/Medium	256	\$45,000	\$34,000,000	\$6,000,000	Master Plan cost plus inflation, security conditions
WEC	New 200 Bed Housing Unit Addition with Addition to Building A (Food Serv., Educ., etc.)	Minimum/Community	200	\$65,000	\$11,000,000	\$4,500,000	200 inmates, 185 sf/inmate, plus ancillary support /37000sf Housing+8600sf support @ \$225/sf-inflation/sec.)
CCCO	New 200 Bed Housing Unit Addition with Ancillary Support (Food Serv., Admin., etc.)	Minimum/Community	200	\$75,000	Unknown	Unknown	200 inmates, 185 sf/inmate, plus ancillary support Requires closure of Avenue J. Utilities, Parking, Soil Raft
HCC	Renovate HCC for 250 Bed Minimum Security	Minimum	250	\$45,000	\$10,000,000	\$5,000,000	HCC capacity was 152. Code Upgrades, 2nd Floor Remodel, Does not include heating plant, food service or program space
NEW	Medical-Consolidate DCS Infirmaries Includes Aging & Prog. State. for NSP Infirmary	Multi-Custody	Unknown	\$120,000	Unknown	Unknown	Consolidates NSP, TSCI, DEC Infirmaries and provides space for aging inmate population.
TOTALS			1506	\$695,000	\$108,900,000	\$28,500,000	

NOTE 1: New Facilities and Housing Unit Additions are intended to be on existing NDCS and/or State owned land.
NOTE 2: The estimated cost for the Strategic Plan Update and Program Statements are mutually exclusive. In the event funding is provided for the Strategic Plan Update and one or more program statements - then a savings would be realized through cost efficiencies.

Misc/Capital Construction-Capacity Increase (2012).xls

LB 191

LB 191

LEGISLATURE OF NEBRASKA
ONE HUNDRED SECOND LEGISLATURE
FIRST SESSION
LEGISLATIVE BILL 191
Final Reading

Introduced by Council, 11; Ashford, 20.

Read first time January 07, 2011

Committee: Judiciary

A BILL

- 1 FOR AN ACT relating to the Nebraska Treatment and Corrections Act; to
2 amend sections 83-1,107 and 83-1,108, Reissue Revised
3 Statutes of Nebraska; to change provisions relating to
4 sentence reductions; to repeal the original sections; and
5 to declare an emergency.
6 Be it enacted by the people of the State of Nebraska,

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1 Section 1. Section 83-1,107, Reissue Revised Statutes of
2 Nebraska, is amended to read:

3 83-1,107 (1)(a) Within sixty days after initial
4 classification and assignment of any offender committed to the
5 department, all available information regarding such committed
6 offender shall be reviewed and a committed offender department-
7 approved personalized program plan document shall be drawn up. The
8 document shall specifically describe the department-approved
9 personalized program plan and the specific goals the department
10 expects the committed offender to achieve. The document shall also
11 contain a realistic schedule for completion of the department-
12 approved personalized program plan. The department-approved
13 personalized program plan shall be fully explained to the committed
14 offender. The department shall provide programs to allow compliance
15 by the committed offender with the department-approved personalized
16 program plan.

17 Programming may include, but is not limited to:

18 (i) Academic and vocational education, including teaching
19 such classes by qualified offenders;

20 (ii) Substance abuse treatment;

21 (iii) Mental health and psychiatric treatment, including
22 criminal personality programming;

23 (iv) Constructive, meaningful work programs; and

24 (v) Any other program deemed necessary and appropriate by
25 the department.

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

11 ~~(2)~~ ~~(2)(a)~~ The department shall reduce the term of a
12 committed offender by six months for each year of the offender's term
13 and pro rata for any part thereof which is less than a year.

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

23 (c) The total reductions under this subsection shall be
24 credited from the date of sentence, which shall include any term of
25 confinement prior to sentence and commitment as provided pursuant to

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1 section 83-1,106, and shall be deducted from the maximum term, to
2 determine the date when discharge from the custody of the state
3 becomes mandatory.

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

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

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

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1 personalized program plan.

2 Programming may include, but is not limited to:

3 (i) Academic and vocational education;

4 (ii) Substance abuse treatment;

5 (iii) Mental health and psychiatric treatment, including
6 criminal personality programming;

7 (iv) Constructive, meaningful work programs;

8 (v) Community service programs; and

9 (vi) Any other program deemed necessary and appropriate
10 by the office.

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

20 (6) While the offender is in the custody of the board,
21 reductions of terms granted pursuant to ~~subsection (2) subdivision~~
22 (2) (a) of this section may be forfeited, withheld, and restored by
23 the administrator with the approval of the director after the
24 offender has been notified regarding the charges of misconduct or
25 breach of the conditions of parole. In addition, the board may

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1 recommend such forfeitures of good time to the director.

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

6 Sec. 2. Section 83-1,108, Reissue Revised Statutes of
7 Nebraska, is amended to read:

8 83-1,108 (1) The board shall reduce, for good conduct in
9 conformity with the conditions of parole, a parolee's parole term by
10 ~~two~~ ten days for each month of such term. The total of such
11 reductions shall be deducted from the maximum term, less good time
12 granted pursuant to section 83-1,107, to determine the date when
13 discharge from parole becomes mandatory.

14 (2) Reductions of the parole terms may be forfeited,
15 withheld, and restored by the board after the parolee has been
16 consulted regarding any charge of misconduct or breach of the
17 conditions of parole.

18 Sec. 3. Original sections 83-1,107 and 83-1,108, Reissue
19 Revised Statutes of Nebraska, are repealed.

20 Sec. 4. Since an emergency exists, this act takes effect
21 when passed and approved according to law.

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

Hearing

Judiciary Committee
February 02, 2011

SENATOR ASHFORD: Any...(laugh). Okay, go ahead, I'm sorry, Mr.... [LB133]

SENATOR LATHROP: Are we on opponents? [LB133]

SENATOR ASHFORD: I think we're to opponents quickly. [LB133]

SENATOR LATHROP: Are we? Any opponents? [LB133]

SENATOR ASHFORD: We've moved off proponents. [LB133]

SENATOR LATHROP: Anybody here in the neutral capacity, like say the Director of Corrections? [LB133]

SENATOR ASHFORD: And I'll waive my... [LB133]

SENATOR LATHROP: Nobody here in the neutral capacity. [LB133]

SENATOR ASHFORD: Senator Council, LB191. [LB133]

SENATOR COUNCIL: Chairman Ashford, Vice Chairman Lathrop, Vice Vice Chair McGill, other members of the Judiciary Committee, I am Senator Brenda Council, and for the record, the last name is spelled C-o-u-n-c-i-l not C-o-u-n-s-e-l. I represent the 11th Legislative District, and I appear before you this afternoon to introduce LB191. And I am introducing LB191 on behalf of the Department of Corrections and the Nebraska Parole Board, and because it represents one of the components of an approach that I have been exploring with both the Corrections Department and the Parole Board for a number of years. And that approach is earned time as a means of not only reducing corrections costs, but better preparing inmates for reentry. As all of you know, Nebraska currently has a good time law that reduces an individual's sentence by one day for every day served. There are very limited circumstances under which an inmate can lose any good time. Conversely, there is no way to grant additional good time if inmates comply with disciplinary rules and/or complete all recommended programming. As a result of lack of capacity in funding, we are unable at this time to pursue a part of the approach that I've been discussing and I really support, and that is granting additional good time for program completion. But we're not in a financial position or a capacity position to provide that in a fair and equitable basis. And to give you an example, we have a substantial number of individuals who enter the Nebraska Department of Corrections without having earned a high school diploma. And as an incentive for them to obtain a GED or their high school diploma, because now the Department of Corrections is in a position to grant high school diplomas, to grant additional earned time, but there's only so much capacity, and we have inmates who are being released at different times. But what LB191 does and is able to capture is the ability to grant additional good time to inmates who comply with the Correctional Department's disciplinary rules, and it allows

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

Judiciary Committee
February 02, 2011

for parolees to earn reductions in their parole time if they conduct themselves in a manner and in conformity with all the conditions of their parole. So, essentially, LB191 provides that the Correctional Department shall reduce the term of a committed offender by three days per month, beginning on the first month after they've served a year. So after they've served a year, beginning on the first month after the completion of that year, they can earn three additional days of good time. For parolees, parolees could earn up to ten additional days of reduction of their parole term for each month that they conduct themselves in conformance with the conditions of their parole. I direct your attention to the fiscal note which shows a savings of \$108,000 a year upon the first full year of implementation of this...I'll call it earned time, but it's actually increasing good time that...and I think is a conservative figure. And it kind of relates to the discussion that just occurred on what figure do you give the court when you're determining the cost of incarceration. There's the daily per diem rate which is about \$15 per inmate per day which only includes the cost of food and clothing and basic incidentals. And then there is the actual cost per annum to incarcerate someone that includes all expenditures from General Fund, Cash Fund, and federal, and that approach is about \$28,000 per year. And I think the conservative estimate of the fiscal analyst is that conservatively the reduction in time would be the equivalent of 19 inmates. And if you multiply that 19 inmates by the per diem rate, that's where you get to \$108,000. If you multiplied it by the annual cost per inmate, that nearly doubles. So for those reasons, I would urge this committee's favorable consideration of advancing LB191. It serves two purposes, and that is to improve the safety and security of inmates and staff by encouraging inmates to conduct themselves in accordance with disciplinary rules, resulting in the increase in the number of good time that they could earn. And it will result in a cost savings to both the Corrections Department and the Probation Department, because as parolees, time on parole is reduced; it increases the number of individuals that can move into parole without having to increase parole officers. With that, I'd answer any questions that you may have. [LB191]

SENATOR ASHFORD: Thanks, Senator Council. And this also was, I think, one of our... [LB191]

SENATOR COUNCIL: LR542. [LB191]

SENATOR ASHFORD: ...but clearly, it's the work you've been doing... [LB191]

SENATOR COUNCIL: But it's an LR542 recommendation. [LB191]

SENATOR ASHFORD: ...but we did think about it, at least, in LR542. But I think Bob also had it on his modifications as well. [LB191]

SENATOR COUNCIL: As well, yes. And as I indicated, Mr. Houston, Ms. Casmer, and I have been discussing various ways of granting additional good time to parolees and

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Judiciary Committee
February 02, 2011

inmates. [LB191]

SENATOR ASHFORD: Thank you very much. Okay, proponents of this measure? Bob Houston. [LB191]

SENATOR LAUTENBAUGH: Now he testifies. [LB191]

SENATOR ASHFORD: Yeah, yeah. Picking favorites, but we'll let it go (laughter). [LB191]

BOB HOUSTON: (Exhibit 5) Good afternoon, Chairman Ashford and members of the Judiciary Committee. My name is Bob Houston, H-o-u-s-t-o-n. I'm Director of the Nebraska Department of Correctional Services. I'd like to thank Senator Council...thank you, Senator, for introducing the bill on behalf of the department. This bill was a department budget modification resulting in savings to the...and could result in the savings to the department of \$108,000 in the second year due to the population reduction. The savings have been incorporated into the Governor's recommended budget. As of December 2, 2010, 2,760 inmates have been incarcerated for more than a year. Of this number, 687 or approximately 25 percent, did not have a Class I or Class II, or more than three Class III misconduct reports. The current good time provision will remain the same. This legislative bill would add a component to the current good time law for those inmates who are incarcerated with the department after its effective date. Under this bill, inmates could earn an additional three days of good time following a 12-month period, during which he or she had not been found guilty of a Class I and II offense nor more than three Class III offenses under the department's disciplinary code. Examples of Class I and II offenses are assault, possession of a weapon, escape, refusing to submit to a search, disobeying a direct order, gang/security group activities, and false reporting. A Class III offense includes things as possession or receiving unauthorized articles, violations of sanctions, swearing, cursing, and use of abusive language or gestures. This provision has the potential to lower the prison population, and, therefore, reduce costs. It also rewards good behavior within the prison system. Inmates under this bill would have the ability to positively impact their release date by engaging in appropriate actions and refraining from negative ones. LB191 also changes the good time earned by offenders on parole. Currently, inmates on parole receive an additional two days of good time per month for compliance with their parole plan. This bill would change that amount of good time on parole from two days to ten days. The provision incentivizes compliance with the parole plan by offering offenders the opportunity to decrease the amount of time they spend on parole by exhibiting good citizenship. I believe this bill is a positive step in managing both the behavior and the size of the inmate population, and I'd be pleased to answer any questions. [LB191]

SENATOR ASHFORD: Any questions of Bob? Again, Bob, thank you and all of your team for the good work you've been able to do this last year in addressing the prison

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population, where we started from 18 months ago, 2 years ago, this is a dramatic effort, and thanks to Senator Council, of course, who takes a great interest in this. And so, with no other questions, thank you. [LB191]

BOB HOUSTON: Okay. [LB191]

SENATOR ASHFORD: Any other proponents? Opponents? Neutral? Okay. Senator Council, it doesn't seem as if you have a lot of...nothing to respond to. All right. That closes the hearing, and we'll go to Senator Lautenbaugh. LB137. [LB191]

SENATOR LAUTENBAUGH: Good afternoon, Mr. Chairman, members of the committee, my name is Scott Lautenbaugh, L-a-u-t-e-n-b-a-u-g-h. I'm here to introduce LB137. LB137 imposes a one-year limitation on the time to bring a motion for postconviction relief in criminal cases. Such a motion would have to be filed within one year of the date of a judgment of conviction becomes final. Currently, there is no time limitation. Postconviction relief pursuant to 29-3001 must be based upon a denial or infringement of a convicted person's constitutional rights to a degree which renders the judgment of conviction void or voidable. The information required to determine whether such claim exists immediately after the completion of the appellate process. A delay in filing which is currently allowed frustrates case finality and allows for abuses where postconviction motions are filed after important parties relevant to the issue raised are no longer available, especially when claims focus on ineffective assistance of counsel which means the state has to defend the actions of the convicted criminal's original defense counsel which gets more difficult to do as time goes on and memories fade and whatnot. This bill will align us with the federal system which also has a one-year limitation for postconviction challenges through habeas corpus motions. LB137 does not affect Nebraska's motion for new trial based upon newly discovered evidence or Nebraska's DNA Testing Act. LB137 also has a grandfather provision which allows any person whose conviction was final prior to the effective date of this bill to file a postconviction motion within one year of such date. I brought this because I believe Nebraskans should be able to depend on the finality of criminal convictions. This critical piece of legislation validates court decisions and brings closure to victims. I know...hope I'm being followed by people from the Attorney General's Office who will explain this better than I can as this is not my area. I would be happy to answer any questions, but more likely than not, I'm going to refer them on to the people who are the experts in this. [LB137]

SENATOR ASHFORD: Thank you, Senator Lautenbaugh. Yes, Senator Council. [LB137]

SENATOR COUNCIL: Yes, thank you, Chairman Ashford. Thank you, Senator Lautenbaugh. The current 29-3001, do you know how long that has been the law of the state of Nebraska? [LB137]

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Floor

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advancement of LB159. Thank you, Mr. President. [LB159]

SENATOR GLOOR: Thank you, Senator McGill. The question is the advancement of LB159 to E&R Initial. All those in favor vote aye; all those opposed vote nay. Have you all voted? Record, Mr. Clerk. [LB159]

CLERK: 34 ayes, 0 nays, Mr. President, on the advancement of LB159. [LB159]

SENATOR GLOOR: LB159 advances. Mr. Clerk. [LB159]

CLERK: Mr. President, LB191 is by Senator Council. (Read title.) The bill was introduced on January 7, referred to the Judiciary Committee, advanced to General File. I have no amendments to the bill at this time, Mr. President. [LB191]

SENATOR GLOOR: Senator Council, you're recognized to open on LB191. [LB191]

SENATOR COUNCIL: Yes, thank you, Mr. President. I rise to urge this body's advancement of LB191. LB191 reflects one of the recommended reductions considered by the Judiciary Committee during the LR542 process and I introduced LB191 on behalf of the Department of Corrections. LB191 provides the opportunity for Corrections Department inmates to earn additional good time and for parolees to further reduce their parole terms. Under current law, an inmate receives one day of good time for each day of his or her sentence. By way of example, an individual sentenced to a term of four years is eligible for parole after two years. Under LB191, that inmate would have the opportunity to earn an additional 36 days of good time. LB191 provides that after an inmate has completed one year of his or her sentence, they can then earn three additional days of good time for each month that he or she is not found guilty of committing a Class I or Class II or more than three Class III offenses under the Department of Correction's disciplinary policy. LB191 serves to improve safety and security at our correctional facilities by providing an incentive for inmates to conduct themselves in accordance with correctional department disciplinary policy. Additionally, and most significantly, LB191 will reduce Corrections Department expenditures by \$108,185 in fiscal year '12-13 and provide additional savings in subsequent years. The reduction in expenditures is based on the estimate that 25 percent of the inmate population is expected to be incarcerated for more than one year and that that 25 percent will meet the conduct requirements of the bill. Twenty-five percent is the equivalent of 7,020 days of incarceration. At the current per diem rate of \$15.41 per day, the department would achieve the savings of \$108,000. It is to be noted that the savings is only based on the daily per diem which does not include all of the cost of incarcerating an individual on a daily basis. So if we were to consider the additional costs of incarceration, LB191 results in even more savings to the Department of Corrections. In addition to the savings associated with the reduction in the inmate population, LB191 also provides the opportunity to increase the number of parolees

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without having to increase the number of parole officers. Under current law, a parolee can reduce his or her parole term by two days for each month that they conduct themselves in conformity with the conditions of their parole. Under LB191, parolees would have an opportunity to reduce their terms by ten days a month based upon their conduct during each month. And what the result would be is that we could increase the number of parolees through LB191 by granting more good time, and we could have more individuals on parole under supervision without having to increase the number of parole officers. There was no opposition to LB191, and the Judiciary Committee unanimously voted to advance LB191 to General File. And I again urge this body to vote to advance LB191 to Select File. Thank you, Mr. President. [LB191]

SENATOR GLOOR: Thank you, Senator Council. (Visitor Introduced.) We move to floor discussion. Senator Lautenbaugh, you're recognized. [LB191]

SENATOR LAUTENBAUGH: Thank you, Mr. President and members of the body. I do rise in support of LB191, and I applaud Senator Council for bringing it. This bill will help us with some cost savings without putting public safety at risk. I think Senator Council's opening was very comprehensive and complete. She did notice it came out of committee 8-0 with no opposition testifiers. The Department of Corrections came in, in favor of it. It's a good bill and I would urge your support, and I'll yield the rest of my time to Senator Ashford. [LB191]

SENATOR GLOOR: Senator Ashford, 4 minutes 25 seconds. [LB191]

SENATOR ASHFORD: Yes, thank you, Mr. President. And I'd also like to thank Senator Council for bringing this bill, and for the support of the Department of Corrections throughout the process of finding innovative ways to address public safety and efficiencies within the Department of Corrections. This bill clearly does it, as does the Department of Corrections' overall approach to the expedited parole process or managing through the parole process that they are engaged in right now. This is good work by the department. Thank you, Senator Council, and I would concur with Senator Lautenbaugh. Thank you. [LB191]

SENATOR GLOOR: Senator Ashford, you are the next speaker in the queue. Senator Ashford waives. Senator Louden. [LB191]

SENATOR LOUDEN: Thank you, Mr. President and members of the body. As I look at this bill I think it's a very good idea that we have something like that because there are people in there that haven't committed that heinous a crime, I guess, to best describe it, and should have a reason, if they behave themselves in there, to get out earlier. One thing I am concerned about is, is this for everyone? Would Senator Council yield for a question? [LB191]

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SENATOR GLOOR: Senator Council, will you yield? [LB191]

SENATOR COUNCIL: Yes. [LB191]

SENATOR LOUDEN: Senator Council, as I look at the bill, is this for anyone that's incarcerated? I mean, can this be someone that's in there for bank robbery and some of the more serious crimes, that if they went in there and behaved themselves they could get out sooner or how does that work with those kind of people? [LB191]

SENATOR COUNCIL: Yes, Senator Louden, and I guess I would start by again directing your attention to the current law. Under current law for every day served in a sentence, an individual earns a day of good time. So let's use, for example, someone who was convicted and sentenced to 20 years for bank robbery. Under the current good time law in Nebraska, that person earns a day of good time for every day of their sentence. So they're eligible for parole after ten years based on a 20 year sentence. [LB191]

SENATOR LOUDEN: I see. Then all this bill does is make it, they get a few more...increases the days that they're eligible if they have good time in there and that's... [LB191]

SENATOR COUNCIL: Yes. It provides an opportunity for them to earn an additional 36 days per year of good time. So it's three days for each month that they remain discipline free. [LB191]

SENATOR LOUDEN: Yeah. Okay. Thank you, Senator Council. Thank you, Mr. President. [LB191]

SENATOR GLOOR: Thank you, Senator Louden. Seeing no further senators wishing to be recognized, Senator Council, you are recognized to close on the advancement of LB191. [LB191]

SENATOR COUNCIL: Thank you again, Mr. President. I want to thank my colleagues on the Judiciary Committee for their support of LB191. And as Senator Lautenbaugh stated, this provides an opportunity for the Department of Corrections to reduce its inmate population without placing the department or its operations at risk. We have been considering a variety of options for reducing our inmate populations, because if we don't, we could face the necessity in the future of building additional correctional facilities. And when we weigh the cost of building additional correctional facilities to the cost-savings associated with providing opportunities for those who have conducted themselves in conformity with disciplinary policies of the department while incarcerated, and in addition, providing encouragement for those on parole to comply with all of the conditions of their parole by providing them with additional opportunities to reduce their

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parole, I think everyone in the state benefits from the savings in terms of costs as well as the societal savings associated with providing opportunities to individuals to successfully reenter their respective communities. And with that, I would again urge the advancement of LB191. [LB191]

SENATOR GLOOR: Thank you, Senator Council. The question is the advancement of LB191 to E&R Initial. All those in favor vote aye; all those opposed vote nay. Have you all voted? Record, Mr. Clerk. [LB191]

CLERK: 31 ayes, 0 nays, Mr. President, on the advancement of LB191. [LB191]

SENATOR GLOOR: The bill advances. Mr. Clerk. [LB191]

CLERK: Mr. President, items. Legislative...or Enrollment and Review reports LB278, LB368, LB399, LB556, LB281, and LB314 to Select File, some of which have Enrollment and Review amendments. Banking Committee reports LB404 to General File, LB70 to General File, those signed by Senator Pahls. Government reports LB343 to General File, LB628 General File, LB230 General File with amendments, LB337 General File with amendments, likewise with LB499, and LB338 indefinitely postponed; those signed by Senator Avery. Enrollment and Review also reports LB43, LB108, LB178, LB178A, LB215, LB410, and LB410A as correctly engrossed. A series of hearing notices from the Natural Resources Committee; those signed by Senator Langemeler as Chair. A new A bill, LB181A, by Senator Hansen. (Read by title for the first time.) And Senator Hadley has a new resolution, LR79. That will be laid over, Mr. President. (Legislative Journal pages 615-620.) [LB278 LB368 LB399 LB556 LB281 LB314 LB404 LB70 LB343 LB628 LB230 LB337 LB499 LB338 LB43 LB108 LB178 LB178A LB215 LB410 LB410A LB181A LR79]

A priority motion. Senator Utter would move to adjourn the body until Wednesday morning, February 23, at 9:00 a.m.

SENATOR GLOOR: You have heard the motion to adjourn until 9:00 a.m. Wednesday. All in favor say aye. All opposed say nay. We are adjourned.

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

By Todd Cooper and Matt Wynn / World-Herald staff writers | Posted: Sunday, June 15, 2014
1:00 am

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.



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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 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.

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» 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 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.

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“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 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

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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 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

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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

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



David Castillas,
74035.pdf

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

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

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

Thank you.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

*Jeannene Douglass
 Records Manager II
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 Nebraska Department of Corrections
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 Subject: RE: sentence calculation

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

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

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

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

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

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Emails show that Nebraska prison officials knew inmate release dates were flawed but failed to act - Omaha.com; OMAHA METRO

Emails show that Nebraska prison officials knew inmate release dates were flawed but failed to act

By Todd Cooper and Alissa Skelton / World-Herald staff writers | Posted: Sunday, July 27, 2014 12:30 am

Read some of the email exchanges

* * *

It was the second high court ruling in 10 years expressly telling prison officials the proper way to calculate release dates for some of Nebraska's worst offenders.

And it essentially informed prison leaders they were violating the law by releasing inmates anywhere from six months to 15 years early.

Yet it was met with doubt, even defiance, from the prison records manager charged with setting inmates' release dates, according to emails obtained exclusively by The World-Herald.

The emails to her supervisors — combined with memos and legal briefs — paint a picture of a Nebraska Department of Correctional Services that ignored the law despite two Nebraska Supreme Court rulings, a lower court decision and prosecutors' alarms that two prisoners were on the streets early.

On Feb. 8, 2013, just five hours after the Nebraska Supreme Court spelled out the state's sentencing law in no uncertain terms, the longtime corrections records manager fired off an email to her supervisors.

Prison officials were "asked if we would ... go with what the Supreme Court says," wrote Jeannene Douglass. "I said ... we would do what is in the inmate's best interest, that being, continue calculating the sentences the way we have always done it."

Douglass gave a few explanations why the prisons could continue to defy the law.

She wrote this: "The inmate, obviously, would not complain since he will serve less time by our calculations."

And this: "It would also serve (then-Corrections director Bob Houston's) desires, as well, to not

From: Jeannene Douglass
Sent: Friday, February 08, 2013 2:04 PM
To: Cheryl, George
Cc: Wanda, Linda, Robert, Kyle
Subject: DeWitt, Carlisle 71011



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

Cheryl asked me if we would continue to calculate the sentence in the right way or go with what the Supreme Court says. I said, and she interpreted me, that we would do what is in the inmate's best interest, that being, continue calculating the sentence the way we have always done it. He will serve one-half of the maximum sentence for discharge, as long as the mandatory minimum term applied by the law prevails. If the word ration in the sentence in the statute regarding mandatory minimum sentences, the Court would serve an additional 18 years (10 years if discharge the way we calculate the sentence, 27 years following the Supreme Court's model). She agreed with me, and suggested that I share this with you, Mr. Orens, for your input and expertise in this matter. She also said the benefit, obviously, would not completely flow to will serve less time by our calculations. It would also serve the Director's desires, as well, to not increase our population any more than we can handle.

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

Thank you

Jeannene Douglass
Records Manager II
Central Records Office
Nebraska Department of Correctional Services
PH: 402-476-3733
Email: jdouglass@dnrc.state.ne.us

email 1

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increase our population any more than we must.”

And this: “It would be a real mess to have to go back in and recalculate everyone who has mandatory minimum sentences.”

Nebraska prisons are in the midst of cleaning up that mess, after a June 15 World-Herald investigation prompted officials to add more than 2,000 years to the sentences of more than 750 prisoners saddled with mandatory terms. Since then, Gov. Dave Heineman has called for the recalculation of hundreds of release dates, the return of some of the early-released prisoners and a personnel investigation into who was responsible for the massive miscalculations.

Now government correspondence provided by the Nebraska Attorney General’s Office, in response to a World-Herald records request, shows that:

» At least four Corrections officials, including the department’s legal director and the head of the unit tasked with calculating release dates, were made aware in February 2013 that the state wasn’t calculating sentences correctly. Yet no one corrected release dates until the newspaper presented its findings 16 months later.

» Long before the 2013 ruling, the department had been made aware of a 2002 ruling that laid out how to calculate such sentences. Nebraska Attorney General Jon Bruning now calls that ruling “very clear,” although emails and legal briefs show that a longtime assistant attorney general did not have a clear understanding of the ruling.

» The Attorney General’s Office notified Corrections of the sentencing laws three times from 2002 to 2013. Emails showed limited follow-up to ensure Corrections was complying.

» Nebraska’s chronic prison overcrowding — the population currently is 57 percent over capacity — wasn’t far from mind in emails.

Reached by telephone, Douglass — who retired last year after four decades with the state — wouldn’t specifically address whether prison officials felt pressure to ignore the ruling because of overcrowding.

“When you’re a records manager you do what you’re told,” she said. “There was always pressure.”

She declined further comment.

Heineman, who has expressed anger over the debacle, said the current director, Mike Kenney, is “in the process” of sorting out what went wrong. The State Patrol has rounded up all but one of the early-released prisoners who the governor decided should be returned.

“I believe some time in the next couple of weeks the Corrections Department will be able to announce what they’re going to do,” Heineman said on July 16. “They’ve got to get this one right, and I want to make sure they’ve got their facts when they take whatever appropriate action.”

* * *

At 9 a.m. on Feb. 8, 2013, the Nebraska Supreme Court released its ruling in the case of David Castillas, an Omaha gang member convicted of two brazen shootings.

Castillas, who went by the street name "Peanut," had shot up two houses in a fit of jealousy over a girlfriend. On June 4, 2010, the then-18-year-old and another gunman fired 23 shots into the house of Donald Betts, who had once dated Castillas' girlfriend.

The spray of bullets narrowly missed Betts' parents and his three young siblings.

Six days later Castillas and the other gunman fired 16 shots into the house of a friend of Betts. One bullet pierced the arm of a woman asleep in her bed.

After a jury convicted him, Castillas was sentenced to 30 to 80 years in prison. With mandatory terms for gun crimes, Castillas was to serve 25 years before he could receive the customary day off for every day served under Nebraska's good-time law.

In turn, Castillas faced 27½ years before parole eligibility and 52½ years before release, according to the Supreme Court ruling.

Corrections set the correct parole date. But the department, using a two-decade-old formula, simply cut his maximum sentence in half. That meant Castillas would be released in 40 years — 12½ years early.

In its ruling, the court rejected Corrections' formula, ordering the department to factor in the full effect of mandatory terms before cutting the rest of a prisoner's sentence in half.

"Logically," the ruling read, "a defendant must serve the mandatory (term) before earning good-time credit toward the maximum portion of the sentence."

At 9:41 a.m., Linda Willard, an assistant attorney general under Bruning, sent emails to Douglass and Douglass' boss, records administrator Kyle Poppert.

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

At 11:48 a.m., Douglass responded. The records clerk took issue with the Supreme Court.

"The statements in this (case) regarding the calculation of parole eligibility are correct. The manner presented regarding the discharge date ... is not correct. ... The discharge date is not calculated in the same manner as the parole eligibility date."

Douglass goes on to argue the sentence length the Supreme Court calculated for Castillas.

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"Mr. Castillas will discharge ... after serving one-half of the maximum sentence," she wrote.

At 1:19 p.m., Willard responded: "Note that the Supreme Court said (that) was wrong. ... If you are doing it differently than what the Supreme Court said is the 'correct' way to calculate, do you decide to stay with the 'right' way or go with what the Supreme Court said is the correct way?"

At 1:41 p.m., Douglass wrote back. "Wouldn't the right thing to do be to continue the way we have always done it because it, too, was tried and tested. I don't know. It would be a real mess to have to go back in and recalculate everyone who has mandatory minimum sentences. What do you think?"

Willard — a 32-year state employee once described as the Corrections Department's "law firm" — didn't respond to that email. The Attorney General's Office said it had no other evidence of emails or memos from Willard on the sentencing issue.

At 2:09 p.m., Douglass sent an email to her supervisor, Poppert, and George Green, Corrections' longtime general counsel. She copied Willard.

"Linda (Willard) asked me if we would continue to calculate the sentence in the right way or go with what the Supreme Court says," Douglass wrote. "I said, and she supported me, that we would do what is in the inmate's best interest, that being, continue calculating sentences the way we have always done it."

She turned to the Castillas case. Douglass noted that the prisons' calculation would have let the gang member go free at age 58, instead of 70.

"If we would calculate the sentence in the manner according to the Supreme Court's decision, Mr. Castillas would serve an additional 12½ years," Douglass wrote.

She alluded to an exchange she'd had with Willard that day. Douglass wrote that Willard "said the inmate, obviously, would not complain since he would serve less time by our calculations."

Douglass then closed her email with a parenthetical: "It would also serve the Director's desires, as well, to not increase our population any more than we must."

It is unclear what further discussions took place among Corrections officials. The department has yet to provide The World-Herald with any written correspondence from that time period.

The Corrections officials who were notified of the Castillas ruling — Green; his assistant attorney Kathy Blum; and Poppert — either didn't return calls last week or declined to provide further explanation.

Houston, the former director who retired in September 2013 after several controversies involving released prisoners, said he was not alerted to the Supreme Court rulings and did not instruct anyone to ignore them. Houston said easing the burgeoning prison population was "everybody's desire."

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 “But that had nothing to do with this (sentencing) issue,” Houston said, before declining further comment.

In a telephone interview, Willard said she did not recall exchanging emails with Douglass — or Douglass’ characterizations that Willard supported the status quo on sentencing.

Willard, who retired from the Attorney General’s Office in May, said she normally did not tell Corrections employees what to do — she just advised them of the law.

“I don’t recall if the legal team at Corrections contacted me (further) about the Castillas case,” Willard said. Viewing the emails “doesn’t bring back any clearer recollection of the incident other than I did notify the department about the opinion.”

It is clear, however, what Corrections didn’t do.

The department didn’t correct the sentences. In fact, Corrections didn’t even correct Castillas’ release date — despite the Supreme Court’s explicit instructions.

It was far from the only time Corrections was put on notice that it might be releasing prisoners early.

In October 2002 the Nebraska Court of Appeals — a step below the State Supreme Court — ruled that a Scottsbluff man should have to serve, in full, the mandatory term given to him for being a habitual criminal.

No one can cut the mandatory term of a sentence in half, the court ruled.

The Court of Appeals noted that state senators, beginning in 1995, had enacted mandatory terms for some of the state’s worst offenders: serial criminals, drug dealers, gun thugs and child rapists.

“The statute clearly indicates ... and the legislative history establishes that the Legislature intended for (those) inmates to serve the entire mandatory (term) with no reductions,” the appeals court wrote.

Two months later the Nebraska Supreme Court ruled in the case of a habitual criminal, drug dealer James Johnson. Johnson was sentenced to 10 years in prison — the mandatory term for habitual criminals.

He sued the state, saying he should be released after five years under Nebraska’s good-time law.

Johnson’s argument: A judge gives each defendant a minimum and maximum sentence. The habitual criminal law said nothing about the maximum term. It said only that the minimum must be 10 years.

Therefore, he argued, his maximum sentence should be cut to five years.

In December 2002 the Nebraska Supreme Court rejected Johnson’s argument, ordering him to serve the full mandatory term on both the minimum and maximum sentences.

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The high court noted that if Johnson prevailed, his sentence would be absurd: 10 years until he was eligible for parole, but just five years until he was released.

“It would not serve the Legislature’s intent if a defendant could be mandatorily discharged before being eligible for parole,” the high court wrote. “The intent of habitual criminal sentencing is thwarted if good-time credit is applied to the maximum term of the sentence before the mandatory (term) has been served.”

Johnson attempted further appeals but was denied.

In August 2005, Willard, the assistant attorney general, notified Green, Corrections’ legal director, that Johnson’s appeals were over.

Little is known of what discussion took place then. Corrections and the Attorney General’s Office both say emails written before the mid-2000s are not available because the state switched computer software.

But the limited correspondence obtained by The World-Herald shows that Corrections officials were conservative and, at times, confused as they calculated sentences.

When it came to minimum sentences for parole, Corrections and the Supreme Court were on the same page. However, Corrections came up with its own three-step method of calculating a prisoner’s maximum sentence:

1. Cut the prisoner’s maximum sentence in half.
2. Compare that number with the mandatory term for the crime.
3. Impose the greater of the two numbers.

In an email, a Corrections record keeper referred to that method as “somewhat confusing and involved.”

It also ignored large chunks of a prisoner’s remaining sentence.

Green, the Corrections attorney, has said he believed the 2002 ruling was more about good-time reductions in which an inmate gets a day off for every day served. (However, it primarily concerned mandatory terms, not good-time calculations.)

“There had been a lot of ambiguity and confusion in how to do this,” Green said.

Bruning disputed that. He has called the 2002 ruling the “seminal case” in how to calculate release dates — and says the Supreme Court’s ruling was “very clear.”

Confusion persisted, however, within Bruning’s office.

In a May 2012 brief to the Nebraska Supreme Court, one of Bruning’s assistants argued that the high

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court should take up the Castillas case because the law wasn't clear on mandatory terms.

"The (Supreme) court has explained how to calculate parole eligibility when mandatory minimums are involved," Assistant Attorney General James Smith wrote. "But it has not explained how to calculate release (dates) when mandatory minimums are involved. Our statutes on this point need judicial construction. The result will allow attorneys to accurately advise their clients, trial judges to determine sentences ... and most importantly, insure that the Department of Corrections correctly determines the amount of time an offender should actually serve."

Before the Supreme Court could rule in Castillas, the Attorney General's Office notified Corrections of another out-of-whack release.

Christopher Lohman, a serial burglar from Cheyenne County, was supposed to be in prison until at least 2022 on two habitual criminal convictions.

Instead, prison officials mistakenly paroled him in 2012. Then in January 2013, Lohman assaulted a bar patron who had caught Lohman trying to break into a car outside.

On Jan. 19, 2013, Scotts Bluff County Attorney Doug Warner wrote to the chief criminal prosecutor of the Nebraska Attorney General's Office, asking for help.

"I saw (Lohman's) name in a police report this week and could not believe he was out of prison," Warner wrote. "I did some research and it appears to me that he was released 10 years early by the Department of Corrections. ... He should not have been eligible for parole for 20 years."

Four days later the attorney general's chief criminal prosecutor, John Freudenberg, sent Lohman's sentencing order to Poppert and to Blum, one of two attorneys under Green. Freudenberg also called both Poppert and Blum.

They promised to review the sentencing orders and, if necessary, return Lohman to custody.

Days later, Corrections corralled Lohman and quietly returned him to a Nebraska prison.

Freudenberg followed up on Feb. 19, 2013, alerting Blum to the Castillas decision.

Yet it doesn't appear that Corrections took any steps to investigate whether other prisoners were prematurely released.

As for Lohman, his mistaken parole was thwarted. The career criminal has since died in custody.

Before he died — even after prosecutors had alerted Corrections to the correct way to calculate his sentence — the department still listed the wrong release date. By 10 years.

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In May 2014, Rick Barcelona picked up a World-Herald and learned that the man who had shot him in June 2010 was on a prison-release program for inmates who are about three years from getting out.

In fact, shooter Quentin Jackson was appearing at a court hearing on a day pass, wearing a suit and tie rather than a prison-issued jumpsuit as he walked in with his girlfriend.

Not possible, Barcelona thought. That night four years ago Barcelona had kicked Jackson out of the 20s Night Club in Omaha. Jackson, a customer, had been beefing about a bar tab.

An hour later, while standing outside the club, Barcelona watched as Jackson pulled up in a car, braced a handgun on the edge of the driver's window and smiled. He then fired at Barcelona.

Barcelona ducked. A bullet penetrated his skull but not his brain.

A judge sentenced Jackson to 15 years in prison, including a mandatory five-year term for a gun crime.

Barcelona had good reason — and a good way — to track how much time Jackson had left on his sentence. His daughter was born mere days after his near-deadly encounter.

Every one of her birthdays is a blessing, Barcelona said, a reminder of what he could have missed. Every birthday also is a barometer, roughly marking off how much time his shooter has served.

So Barcelona picked up the phone and called Corrections — eventually getting in touch with Poppert, the release-date administrator.

Barcelona said he told Poppert that Jackson's original release date should have been in 10 years, not the 7½ listed on prison records.

Poppert responded that he would check into it and get back to Barcelona.

Poppert never did, Barcelona said.

At the same time, The World-Herald was making similar phone calls — pointing out to Corrections that, under the department's calculations, Jackson would absurdly be eligible for release before he was eligible for parole.

Corrections spokeswoman Dawn-Renee Smith said she had been looking into it.

"I did ask the same question that you asked," Smith said in May. "I can't tell you anything more than that's how it's been done. That's how the statute reads."

That is not, however, how state law reads.

Counting Jackson's case, Corrections had been alerted that release dates were potentially amiss in at least four cases over 12 years. Yet there's no evidence of efforts to recalculate those inmates' sentences — or to research precisely how many other prisoners might have early release dates.

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And at least four prison officials — from the longtime records manager up to the longtime legal director — had been informed of the department's flawed formula.

Chief Deputy Attorney General David Cookson said the attorney general's duty was only to notify Corrections of the high court rulings. It is up to Corrections' attorneys and directors to interpret and apply those decisions, he said.

"Beyond what we did, there is not anything we could do," Cookson said. "It was incumbent on (Corrections) to read the decision and apply the law, which is why they have lawyers."

Cookson said he hasn't seen any evidence that prison officials' inaction was criminal.

Under state law, a public servant commits official misconduct, a misdemeanor, if he or she "knowingly violates any statute or lawfully adopted rule or regulation relating to his official duties."

Barcelona, Jackson's victim, said he doesn't understand how Corrections could let a gunman walk free six years before his actual release date.

And the bouncer-turned-bar manager said he doesn't understand how Corrections couldn't follow state law.

How did he figure it out?

"Google," he said. "I looked at the law. It's pretty much a stock formula. It's really not difficult."

Life is a little more difficult now for the hundreds of prisoners who have had their prison stays lengthened.

Several prisoners released early have been brought back in. Others have been handcuffed together in groups and transported from work-release centers to maximum-security prisons.

Jackson, meanwhile, is reeling. After his release date was extended to June 2020, 38-year-old Jackson was transferred from a Lincoln work-release center to an Omaha prison.

He recently had a further hearing on his appeal. This time he "appeared" by telephone from prison. No suit and tie. No girlfriend next to him.

The judge asked how he was doing.

Not good, he said. He told the judge his fellow prisoners are upset that Corrections has increased their sentences.

But the inmates' ire hasn't been directed at the prison officials who for decades have miscalculated release dates, he said.

Instead, it's been directed at the prisoner who turned heads — and started The World-Herald's

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investigation — when he walked into court in a suit and tie.

“Everyone,” Jackson sheepishly told the judge, “is mad at me.”

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alissa.skelton@owh.com

826 N.W.2d 255

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

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

Supreme Court of Nebraska.
STATE of Nebraska, Appellee,
v.
David G. CASTILLAS, Appellant.

No. S-11-685.
Feb. 8, 2013.

Background: Defendant was convicted in the District Court, Douglas County, Gary B. Randall, J., of two counts of discharging a firearm at a dwelling while in or near a motor vehicle, one count of second degree assault, and three counts of use of a deadly weapon to commit a felony. He appealed.

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

- (1) photographs of defendant holding a rifle were admissible;
- (2) evidence was sufficient to support convictions;
- (3) jury could be instructed on voluntary flight;
- (4) sentence of 30 to 80 years was valid even though it did not match trial court's stated intention that defendant be eligible for parole after 25 years.

Affirmed.

West Headnotes

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

- [110 Criminal Law](#)
 - [110XVII Evidence](#)
 - [110XVII\(F\) Other Misconduct by Accused](#)
 - [110XVII\(F\)1 Other Misconduct as Evidence of Offense Charged In General](#)
 - [110k368.2 k. Discretion of court in general. Most Cited Cases](#)

◦ [110 Criminal Law](#) [KeyCite Citing References for this Headnote](#)

- [110XXIV Review](#)
 - [110XXIV\(N\) Discretion of Lower Court](#)
 - [110k1153 Reception and Admissibility of Evidence](#)
 - [110k1153.5 k. Other offenses. Most Cited Cases](#)

It is within the discretion of the trial court to determine relevancy and admissibility of evidence of other wrongs or acts, and the trial court's decision will not be reversed on appeal absent an abuse of discretion. West's Neb.Rev.St. §§ 27-403, 27-404(2).

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

- [110 Criminal Law](#)
 - [110XXIV Review](#)
 - [110XXIV\(P\) Verdicts](#)

- [110k1159](#) Conclusiveness of Verdict
 - [110k1159.2](#) Weight of Evidence in General
 - [110k1159.2\(9\)](#) k. Weighing evidence. Most Cited Cases
 - [110](#) Criminal Law KeyCite Citing References for this Headnote
 - [110XXIV](#) Review
 - [110XXIV\(P\)](#) Verdicts
 - [110k1159](#) Conclusiveness of Verdict
 - [110k1159.3](#) Conflicting Evidence
 - [110k1159.3\(1\)](#) k. In general. Most Cited Cases
 - [110](#) Criminal Law KeyCite Citing References for this Headnote
 - [110XXIV](#) Review
 - [110XXIV\(P\)](#) Verdicts
 - [110k1159](#) Conclusiveness of Verdict
 - [110k1159.4](#) Credibility of Witnesses
 - [110k1159.4\(1\)](#) k. In general. Most Cited Cases
- [110](#) Criminal Law KeyCite Citing References for this Headnote
- [110XXIV](#) Review
 - [110XXIV\(P\)](#) Verdicts
 - [110k1159](#) Conclusiveness of Verdict
 - [110k1159.6](#) k. Circumstantial evidence. Most Cited Cases

In reviewing a sufficiency of the evidence claim, whether the evidence is direct, circumstantial, or a combination thereof, the standard is the same: an appellate court does not resolve conflicts in the evidence, pass on the credibility of witnesses, or reweigh the evidence; such matters are for the finder of fact.

[3] KeyCite Citing References for this Headnote

- [110](#) Criminal Law
 - [110XXIV](#) Review
 - [110XXIV\(M\)](#) Presumptions
 - [110k1144](#) Facts or Proceedings Not Shown by Record
 - [110k1144.13](#) Sufficiency of Evidence
 - [110k1144.13\(2\)](#) Construction of Evidence
 - [110k1144.13\(3\)](#) k. Construction in favor of government, state, or prosecution. Most Cited Cases
- [110](#) Criminal Law KeyCite Citing References for this Headnote
- [110XXIV](#) Review
 - [110XXIV\(P\)](#) Verdicts
 - [110k1159](#) Conclusiveness of Verdict
 - [110k1159.2](#) Weight of Evidence In General
 - [110k1159.2\(7\)](#) k. Reasonable doubt. Most Cited Cases

In reviewing sufficiency of the evidence to support a criminal conviction, the relevant question for an appellate court is whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.

[4] KeyCite Citing References for this Headnote

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- 110 Criminal Law
 - 110XXIV Review
 - 110XXIV(L) Scope of Review In General
 - 110XXIV(L)4 Scope of Inquiry
 - 110k1134.51 k. Instructions. Most Cited Cases

Whether jury instructions are correct is a question of law, which an appellate court resolves independently of the lower court's decision.

[5] KeyCite Citing References for this Headnote

- 110 Criminal Law
 - 110XXIV Review
 - 110XXIV(N) Discretion of Lower Court
 - 110k1156.1 Sentencing
 - 110k1156.2 k. In general. Most Cited Cases

An appellate court will not disturb a sentence imposed within the statutory limits absent an abuse of discretion by the trial court.

[6] KeyCite Citing References for this Headnote

- 110 Criminal Law
 - 110XXIV Review
 - 110XXIV(E) Presentation and Reservation In Lower Court of Grounds of Review
 - 110XXIV(E)1 In General
 - 110k1043 Scope and Effect of Objection
 - 110k1043(1) k. In general. Most Cited Cases

- 110 Criminal Law KeyCite Citing References for this Headnote
 - 110XXIV Review
 - 110XXIV(E) Presentation and Reservation In Lower Court of Grounds of Review
 - 110XXIV(E)1 In General
 - 110k1044 Motion Presenting Objection
 - 110k1044.2 Sufficiency and Scope of Motion
 - 110k1044.2(2) k. Renewal of motion. Most Cited Cases

Defendant waived objection to witness' testimony that he had seen defendant in possession of a rifle that was similar to rifle alleged to have been used in charged shootings, and thus claim that testimony was inadmissible was not reviewable on appeal; although defendant moved prior to trial to exclude the testimony and raised a continuing objection during direct examinations of other witnesses, he did not object or renew his motion to exclude during witness' testimony. West's Neb.Rev.St. § 25-1141.

[7] KeyCite Citing References for this Headnote

- 110 Criminal Law
 - 110XVII Evidence
 - 110XVII(F) Other Misconduct by Accused
 - 110XVII(F)4 Other Misconduct Inseparable from Crime Charged
 - 110k368.75 k. Assault and battery. Most Cited Cases

- 110 Criminal Law KeyCite Citing References for this Headnote

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- 110XVII Evidence
 - 110XVII(F) Other Misconduct by Accused
 - 110XVII(F)4 Other Misconduct Inseparable from Crime Charged
 - 110k368.96 k. Weapons and explosives. Most Cited Cases

Photographs showing defendant holding a rifle that was similar to one alleged to have been used in charged shootings were not inadmissible under rule governing other bad acts evidence, but instead were admissible as intrinsic evidence because they corroborated testimony of witnesses that defendant had access to and was in possession of a .22-caliber rifle at the time of the shootings. West's Neb.Rev.St. § 27-404(2).

[8] KeyCite Citing References for this Headnote

- 110 Criminal Law
 - 110XXIV Review
 - 110XXIV(N) Discretion of Lower Court
 - 110k1153 Reception and Admissibility of Evidence
 - 110k1153.1 k. In general. Most Cited Cases

Where the rules of evidence commit an evidentiary question to the discretion of the trial court, the admissibility of evidence is reviewed on appeal for an abuse of discretion.

[9] KeyCite Citing References for this Headnote

- 110 Criminal Law
 - 110XVII Evidence
 - 110XVII(D) Facts In Issue and Relevance
 - 110k338 Relevancy In General
 - 110k338(7) k. Evidence calculated to create prejudice against or sympathy for accused. Most Cited Cases

- 110 Criminal Law KeyCite Citing References for this Headnote
 - 110XXIV Review
 - 110XXIV(N) Discretion of Lower Court
 - 110k1153 Reception and Admissibility of Evidence
 - 110k1153.3 k. Relevance. Most Cited Cases

Whether evidence is unfairly prejudicial is a decision for the trial court, whose decision an appellate court will not reverse unless there is an abuse of discretion. West's Neb.Rev.St. § 27-403.

[10] KeyCite Citing References for this Headnote

- 110 Criminal Law
 - 110XVII Evidence
 - 110XVII(D) Facts in Issue and Relevance
 - 110k338 Relevancy In General
 - 110k338(7) k. Evidence calculated to create prejudice against or sympathy for accused. Most Cited Cases

The fact that evidence is prejudicial is not enough to require exclusion under rule requiring exclusion of evidence whose probative value is substantially outweighed by danger of unfair prejudice, because most, if not all, of the evidence a party offers is calculated to be prejudicial to the opposing party; it is only the evidence which has a tendency to suggest a decision on an improper basis that is unfairly prejudicial. West's Neb.Rev.St. § 27-403.

[11] KeyCite Citing References for this Headnote

110 Criminal Law

110XVII Evidence

110XVII(V) Weight and Sufficiency

110k566 k. Identity and characteristics of persons or things. Most Cited Cases

Evidence was sufficient to identify defendant as person who fired a rifle from a car at two houses, injuring a resident of one of the houses, as required to support convictions discharging a firearm at a dwelling while in or near a motor vehicle, second degree assault, and use of a deadly weapon to commit a felony; witnesses testified that they were in the car with him on nights of the shootings and saw defendant fire a rifle at the houses, and defendant had a motive to commit the shootings because he had a desire for revenge against his girlfriend's ex-boyfriend, who he believed would be inside the houses.

[12] KeyCite Citing References for this Headnote

110 Criminal Law

110XXIV Review

110XXIV(P) Verdicts

110k1159 Conclusiveness of Verdict

110k1159.2 Weight of Evidence in General

110k1159.2(2) k. Verdict unsupported by evidence or contrary to evidence. Most Cited

Cases

110 Criminal Law KeyCite Citing References for this Headnote

110XXIV Review

110XXIV(P) Verdicts

110k1159 Conclusiveness of Verdict

110k1159.2 Weight of Evidence in General

110k1159.2(7) k. Reasonable doubt. Most Cited Cases

Only where evidence lacks sufficient probative value as a matter of law may an appellate court set aside a guilty verdict as unsupported by evidence beyond a reasonable doubt.

[13] KeyCite Citing References for this Headnote

110 Criminal Law

110XX Trial

110XX(L) Waiver and Correction of Irregularities and Errors

110k901 k. Rulings as to weight and sufficiency of evidence. Most Cited Cases

Defendant waived argument on appeal, that trial court erroneously denied his motion to dismiss assault and firearms charges, by calling and examining a witness after state had rested and after his motion to dismiss had been overruled.

[14] KeyCite Citing References for this Headnote

110 Criminal Law

110XX Trial

110XX(L) Waiver and Correction of Irregularities and Errors

110k901 k. Rulings as to weight and sufficiency of evidence. Most Cited Cases

When a court overrules a defendant's motion to dismiss at the close of the state's case in chief and

the defendant proceeds to trial and introduces evidence, the defendant waives the appellate right to challenge the trial court's overruling of the motion to dismiss.

[15] KeyCite Citing References for this Headnote

- o 110 Criminal Law
 - o 110XX Trial
 - o 110XX(G) Instructions: Necessity, Requisites, and Sufficiency
 - o 110k778 Presumptions and Burden of Proof
 - o 110k778(11) k. Flight or surrender. Most Cited Cases

Jury at trial of defendant on assault and firearms charges could be instructed that it could consider defendant's voluntary flight after charged shootings in determining defendant's guilt or innocence, since there was sufficient evidence that defendant's departure from state had been a flight; witness testified that she took defendant out of town to meet a relative "days to a week" after second shooting, witness responded "yes" when asked whether defendant had requested to be taken to out of town only after a detective was "kind of poking around," and witness testified that defendant had told her he wished to leave town because if police were looking for anyone they were looking for him.

[16] KeyCite Citing References for this Headnote

- o 110 Criminal Law
 - o 110XXIV Review
 - o 110XXIV(O) Harmless and Reversible Error
 - o 110k1177.3 Sentencing and Punishment
 - o 110k1177.3(2) k. Sentencing proceedings in general. Most Cited Cases

350H Sentencing and Punishment KeyCite Citing References for this Headnote

- o 350HIII Sentence on Conviction of Different Charges
- o 350HIII(D) Disposition
- o 350Hk645 k. Total sentence deemed not excessive. Most Cited Cases

o 350H Sentencing and Punishment KeyCite Citing References for this Headnote

- o 350HV Sufficiency and Construction of Sentence Imposed
- o 350HV(C) Construction
- o 350HV(C)2 Punishment
- o 350Hk1137 Conflict in Record
- o 350Hk1139 k. Oral and written pronouncements. Most Cited Cases

Total prison sentence of 30 to 80 years for two counts of discharging a firearm at a dwelling while in a vehicle, one count of second degree assault, and three counts of use of deadly weapon to commit a felony, was valid, within statutory range, and not required to be reversed for resentencing, even though, due to mathematical error, sentence did not match trial court's stated intention that defendant be eligible for parole after 25 years. West's Neb.Rev.St. §§ 29-2204(1), 83-1,107(2)(a), (3), 83-1,110.

[17] KeyCite Citing References for this Headnote

- o 350H Sentencing and Punishment
 - o 350HXII Reconsideration and Modification of Sentence
 - o 350HXII(B) Grounds and Considerations
 - o 350Hk2252 k. Technical, formal or arithmetical error. Most Cited Cases

It is possible, in limited circumstances, to correct an inadvertent mispronouncement of a valid

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sentence.

[18] KeyCite Citing References for this Headnote

- o 350H Sentencing and Punishment
 - o 350HI Punishment In General
 - o 350HI(E) Factors Related to Offender
 - o 350Hk117 k. Other offender-related considerations. Most Cited Cases

In Imposing a sentence, It is appropriate for a sentencing court to consider how good time credit affects a sentence, that is, when a defendant will be eligible for parole and mandatory release.

[19] KeyCite Citing References for this Headnote

- o 350H Sentencing and Punishment
 - o 350HXII Reconsideration and Modification of Sentence
 - o 350HXII(C) Proceedings
 - o 350HXII(C)1 In General
 - o 350Hk2278 Time
 - o 350Hk2281 k. Term of court. Most Cited Cases
- o 350H Sentencing and Punishment KeyCite Citing References for this Headnote
 - o 350HXII Reconsideration and Modification of Sentence
 - o 350HXII(C) Proceedings
 - o 350HXII(C)1 In General
 - o 350Hk2278 Time
 - o 350Hk2282 k. Execution or service of sentence. Most Cited Cases

When a valid sentence has been put into execution, the trial court cannot modify, amend, or revise it in any way, either during or after the term or session of court at which the sentence was imposed.

[20] KeyCite Citing References for this Headnote

- o 350H Sentencing and Punishment
 - o 350HV Sufficiency and Construction of Sentence Imposed
 - o 350HV(C) Construction
 - o 350HV(C)2 Punishment
 - o 350Hk1137 Conflict In Record
 - o 350Hk1139 k. Oral and written pronouncements. Most Cited Cases

If there is a conflict between the court's sentence and its truth in sentencing advisement, the statements of the minimum and maximum limits control.

****258 Syllabus by the Court**

***174 1. Rules of Evidence: Other Acts: Appeal and Error.** It is within the discretion of the trial court to determine relevancy and admissibility of evidence of other wrongs or acts under Neb. Evid. R. 403 and 404(2), Neb. Rev. Stat. §§ 27-403 (Reissue 2008) and 27-404(2) (Cum. Supp. 2012), and the trial court's decision will not be reversed absent an abuse of discretion.

2. Criminal Law: Evidence: Appeal and Error. In reviewing a sufficiency of the evidence claim, whether the evidence is direct, circumstantial, or a combination thereof, the standard is the same: An appellate court does not resolve conflicts in the evidence, pass on the credibility of witnesses, or reweigh the evidence; such matters are for the finder of fact. The relevant question for an appellate

court is whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.

3. Jury Instructions: Appeal and Error. Whether jury instructions are correct is a question of law, which an appellate court resolves independently of the lower court's decision.

4. Sentences: Appeal and Error. An appellate court will not disturb a sentence imposed within the statutory limits absent an abuse of discretion by the trial court.

5. Rules of Evidence: Appeal and Error. Where the Nebraska Evidence Rules commit the evidentiary question at issue to the discretion of the trial court, the admissibility of evidence is reviewed for an abuse of discretion.

6. Rules of Evidence. The fact that evidence is prejudicial is not enough to require exclusion under Neb. Evid. R. 403, Neb. Rev. Stat. § 27-403 (Reissue 2008), because most, if not all, of the evidence a party offers is calculated to be prejudicial to the opposing party; it is only the evidence which has a tendency to suggest a decision on an improper basis that is unfairly prejudicial under § 27-403.

7. Verdicts: Appeal and Error. Only where evidence lacks sufficient probative value as a matter of law may an appellate court set aside a guilty verdict as unsupported by evidence beyond a reasonable doubt.

8. Motions to Dismiss: Evidence: Waiver: Appeal and Error. When a court overrules a defendant's motion to dismiss at the close of the State's case in chief and the defendant proceeds to trial and introduces evidence, the defendant waives the appellate right to challenge the trial court's overruling of the motion to dismiss.

9. Sentences. It is possible, in limited circumstances, to correct an inadvertent mispronouncement of a valid sentence.

10. Sentences. When a valid sentence has been put into execution, the trial court cannot modify, amend, or revise it in any way, either during or after the term or session of court at which the sentence was imposed.

****259 11. Sentences.** If there is a conflict between the court's sentence and its truth in sentencing advisement, the statements of the minimum and maximum limits control.

Beau G. Finley, Omaha, of Finley & Kahler Law Firm, P.C., L.L.O., for appellant.

Jon Bruning, Attorney General, and Nathan A. Liss, Lincoln, for appellee.

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

WRIGHT, J.

*175 NATURE OF CASE

David G. Castillas was convicted of two counts of discharging a firearm at a dwelling while in or near a motor vehicle, one count of second degree assault, and three counts of use of a deadly weapon to commit a felony. He was sentenced to 5 to 20 years in prison on each conviction of discharging a firearm, 5 to 10 years in prison on the conviction of second degree assault, and 5 to 10 years in prison on each conviction of use of a weapon to commit a felony. All sentences were to be served consecutively. Castillas appeals his convictions and sentences.

SCOPE OF REVIEW

[1] It is within the discretion of the trial court to determine relevancy and admissibility of evidence of other wrongs or acts under Neb. Evid. R. 403 and 404(2), Neb. Rev. Stat. §§ 27-403

(Reissue 2008) and 27-404(2) (Cum. Supp. 2012), and the trial court's decision will not be reversed absent an abuse of discretion. State v. Fremont, 284 Neb. 179, 817 N.W.2d 277 (2012).

[2] [3] In reviewing a sufficiency of the evidence claim, whether the evidence is direct, circumstantial, or a combination thereof, the standard is the same: An appellate court does not resolve conflicts in the evidence, pass on the credibility of witnesses, or reweigh the evidence; such matters are for the finder of fact. The relevant question for an appellate court is whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential *176 elements of the crime beyond a reasonable doubt. State v. Howell, 284 Neb. 559, 822 N.W.2d 391 (2012).

[4] Whether jury instructions are correct is a question of law, which an appellate court resolves independently of the lower court's decision. State v. Smith, 284 Neb. 636, 822 N.W.2d 401 (2012).

[5] An appellate court will not disturb a sentence imposed within the statutory limits absent an abuse of discretion by the trial court. State v. Kass, 281 Neb. 892, 799 N.W.2d 680 (2011).

FACTS BACKGROUND

On June 5, 2010, a driveby shooting occurred at the home of Donald Jones in Omaha, Nebraska. On June 11, another driveby shooting occurred at the home of William Harris, who lived with his mother at the home, also located in Omaha. During the second shooting, Harris' mother sustained a bullet wound to her left arm.

Castillas, Travis Davis, Tiffany Fitzgerald, and Brandy Beckwith were charged in connection with the shootings. On April 26, 2011, the State was granted leave to file additional charges against Castillas. It filed an amended information charging Castillas with two counts of discharging a firearm at a dwelling while in or near a motor vehicle, one count of second degree **260 assault, and three counts of use of a deadly weapon to commit a felony.

Castillas filed a motion in limine to exclude evidence of or testimony regarding an incident following the shootings, during which Castillas allegedly possessed a firearm and brandished it at Donald Betts, a witness for the State. Castillas also moved to exclude any photographs of him handling a firearm. Castillas alleged that evidence on this issue would not be reliable or relevant, that such evidence would be excludable under § 27-404(2), and that any probative value under § 27-403 would be outweighed by unfair prejudice. He also claimed the evidence would be improper propensity evidence prohibited under § 27-404. Both motions were overruled.

*177 JURY TRIAL

Castillas' trial commenced on May 4, 2011, in Douglas County District Court. The State called Davis, Fitzgerald, and Beckwith. All three testified that on June 5, 2010, they drove with Castillas to Jones' house. They testified that Castillas and Davis shot at the residence multiple times with firearms. They also testified that on the night of the second shooting, all four individuals, along with a person named "Lars," drove to Harris' house and that Castillas and Davis each fired at the residence.

EVENTS OF JUNE 4 AND 5, 2010

On the evening of June 4, 2010, Castillas and Davis were "partying" with Fitzgerald and Beckwith. The four of them were taking photographs of themselves holding guns, to "look cool." One of the guns was a .45-caliber pistol that belonged to Davis, and the other was a .22-caliber rifle that belonged to Fitzgerald's father. Fitzgerald recalled that the photographs marked as exhibits 93, 94, 95, and 97 were taken that specific night, because she recognized the black dresses she and Beckwith were wearing.

Davis testified that Castillas and Fitzgerald argued about Betts on the night of the first shooting. Betts had been dating Fitzgerald, who was Castillas' girlfriend, and Castillas wanted revenge. Betts was the son of Jones, and he occasionally lived with Jones. Davis had never met Betts, but he became upset with Betts due to rumors that Betts had fired a weapon at Davis' car.

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Sometime after midnight on June 5, 2010, Castillas accused Fitzgerald of continuing to talk to Betts. Castillas took the rifle, Davis took his pistol, and the four got into Beckwith's car. Beckwith drove, with Davis in the front passenger seat, Fitzgerald in the rear passenger seat, and Castillas in the rear driver's-side seat. Castillas gave Beckwith directions to Jones' house. As they drove past the house, Castillas and Davis both fired at it. Davis sat on "the [front passenger] window sill" and fired his pistol across the roof of the car, and Castillas fired the rifle out the back window. Davis testified he fired at least five *178 or six shots and heard Castillas fire at least two or three shots. The group then returned to Fitzgerald's house.

Jones testified that on June 4, 2010, he lived in Omaha with his wife and three of his children. Betts occasionally resided there as well. At approximately 1:30 a.m. on June 5, while Jones and his wife were in their bedroom, a bullet was fired through the bedroom wall. The couple hid in the closet as several more shots were fired. When the shooting stopped, Jones called the 911 emergency dispatch service. He testified there were no bullet holes in his house prior to this shooting. Betts was not at the house when the incident occurred.

A crime scene technician with the Omaha Police Department crime laboratory testified that she collected shell casings **261 lying in front of Jones' house. She found five shell casings in the street and located 23 bullet holes in the house, which appeared to have been caused by bullets of two different sizes. Several bullets from the house were placed in an envelope along with the five shell casings found in the street.

EVENTS OF JUNE 10 AND 11, 2010

On June 10, 2010, Castillas, Davis, Fitzgerald, Beckwith, and "Lars" were partying at Fitzgerald's house. Castillas mentioned that Betts "hangs out" at Harris' house, and Castillas and Davis talked about "shooting that house up." The five went in Beckwith's car. Davis was in front, and Castillas was in the rear driver's-side seat. Castillas had the same .22-caliber rifle, and Davis had a new 9-mm weapon that he had just obtained. Castillas and Davis fired at Harris' house. After the shooting, they returned to Fitzgerald's house.

Harris' mother lived in Omaha with Harris and her other son. She was asleep during the early morning hours of June 11, 2010, and was awakened when a bullet struck and passed through her left arm. She fell on the floor as several more shots were fired at her house.

OTHER TRIAL EVIDENCE

On June 11, 2010, several hours after the second shooting, Betts went to Fitzgerald's house to talk to her about the shootings. While Betts was talking to Fitzgerald outside, Castillas *179 and Davis came outside. Castillas went back inside, and Betts saw him in an upstairs window with a gun that looked like the .22-caliber rifle used in the shootings.

Det. David Schneider attempted to speak with Fitzgerald following the shootings. Fitzgerald and Beckwith eventually went to an Omaha police station and spoke with Detective Schneider. Initially, they were untruthful, but they later admitted that they were involved in the driveby shootings and provided a detailed account. A detective went to Fitzgerald's house and seized the .22-caliber rifle, two empty magazines, and another magazine that contained 11 rounds of .22-caliber ammunition.

Davis was arrested at his residence, and police seized his .45-caliber pistol. He initially denied involvement in the shootings but subsequently provided a detailed account that matched the accounts given by Fitzgerald and Beckwith. Detective Schneider learned that Beckwith had taken Castillas to meet a family member near Crete, Nebraska, and that Castillas had gone to Texas. Castillas was apprehended in Corpus Christi, Texas, and transported back to Nebraska.

The .22-caliber rifle seized from Fitzgerald's house and the .45-caliber pistol from Davis' house were sent to the Omaha Police Department crime laboratory for ballistic comparison. A senior technician for the crime laboratory analyzed shell casings from both shootings. She testified that the five shell casings from the first driveby shooting were from a .45-caliber pistol and that two of the bullets recovered from the first shooting had characteristics that were consistent with the .22-caliber

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rifle. Regarding the second driveby shooting, the technician determined that 11 shell casings were from the .22-caliber rifle, 5 were from a 9-mm weapon, and all of the bullets recovered that were suitable for comparison were consistent with a 9-mm weapon.

After the evidence was presented, the State rested. Castillas moved to dismiss all charges against him for lack of evidence. The motion was overruled, and Castillas called Fitzgerald to testify.

Following the conclusion of the testimony, the court held a jury instruction conference. ****262** Castillas objected to instruction No. 11, which dealt with voluntary flight. His objection was ***180** overruled, and the court instructed the jury. After submission of the case, the jury found Castillas guilty of all six counts. Each of Castillas' three convictions for use of a deadly weapon to commit a felony required a **mandatory minimum** sentence of 5 years. See Neb.Rev.Stat. §§ 28-1205(1)(c) (Cum. Supp. 2012) and 28-105(1) (Reissue 2008). Both of his convictions for discharging a firearm at a dwelling while in or near a vehicle also required **mandatory minimum** terms of 5 years each. See Neb.Rev.Stat. § 28-1212.04 (Supp.2009) and § 28-105(1). His conviction for second degree assault had no **mandatory minimum** sentence. See Neb.Rev.Stat. § 28-309 (Supp.2009) and § 28-105(1).

CASTILLAS' SENTENCES

A sentencing hearing was held on July 28, 2011. The court stated it intended that for purposes of parole eligibility, Castillas should serve 25 years in the Nebraska Department of Correctional Services after credit for good time. It initially sentenced Castillas to aggregate consecutive prison sentences of 50 to 80 years.

After the court's first sentence pronouncement, the court inquired whether counsel agreed that Castillas would be eligible for parole consideration in 25 years. The prosecutor opined that the court's understanding was incorrect. Counsel disagreed on the calculation of parole eligibility. In response to defense counsel's statement that Castillas might not be eligible for parole for 35 years, the court stated that was not the court's intention.

Before anyone left the courtroom, the court pronounced the following sentences, which in the aggregate amounted to 30 to 80 years:

- Count I, discharging a firearm at a dwelling while in or near a motor vehicle, 5 to 20 years.
- Count II, use of a deadly weapon to commit a felony, 5 to 10 years.
- Count III, second degree assault, 5 to 10 years.
- Count IV, use of a deadly weapon to commit a felony, 5 to 10 years.
- Count V, discharging a firearm at a dwelling while in or near a motor vehicle, 5 to 20 years.
- *181** • Count VI, use of a deadly weapon to commit a felony, 5 to 10 years.

The court's "truth in sentencing" advisement informed Castillas: "That will be a total of 30 to 80 years, meaning you have to serve 25 years to be released on parole. And after 40 years, if you lose no good time, you'll be released." The court's written order directed that the sentences be served consecutively and gave Castillas credit for 379 days served.

ASSIGNMENTS OF ERROR

Castillas alleges, summarized and restated, that (1) the court erred in allowing testimony at trial concerning whether he possessed firearms after the second shooting, (2) the court erred in admitting photographs of Castillas possessing firearms, (3) the evidence at trial was insufficient, (4) the court erred in overruling Castillas' motion to dismiss at the end of the State's case, (5) the court erred in giving jury instruction No. 11 with regard to voluntary flight, and (6) the court erred in ordering a sentence that was substantially different from its intended sentence.

ANALYSIS

EVIDENCE RELATED TO POSSESSION OF .22-CALIBER RIFLE AFTER SECOND SHOOTING

[6] The State introduced evidence that Betts went to Fitzgerald's home several ****263** hours after the second shooting. Betts saw Castillas holding a weapon that looked like the rifle Castillas was alleged to have used in both shootings. Before trial, Castillas moved to prohibit the State from presenting such testimony. The court overruled the motion.

Castillas alleges that during the trial, he was granted a continuing objection to this evidence and that, therefore, his alleged error concerning the admission of the evidence has been preserved for review on appeal. Castillas claims that admission of the evidence violated §§ 27-403 and 27-404.

Section 27-404(2) provides:

Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show that he or she acted in conformity therewith. It may, ***182** however, be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident.

Castillas asserts that the State offered no proper purpose for this evidence and that the court should have held a rule 404 hearing.

The State argues that Castillas waived any objection to this evidence by his failure to object during Betts' testimony. Although Castillas moved to exclude the evidence before trial, he did not object or renew his motion during Betts' testimony that he went to Fitzgerald's house after the second shooting and saw Castillas with a gun that looked like the .22-caliber rifle Castillas allegedly used in the shootings. The State claims that Castillas did not raise the necessary objection, because although he had received a continuing objection during the direct examinations of Davis, Fitzgerald, and Beckwith, he did not object or renew his objection during Betts' testimony.

Neb. Rev. Stat. § 25-1141 (Reissue 2008) provides:

Where an objection has once been made to the admission of testimony and overruled by the court it shall be unnecessary to repeat the same objection to further testimony of the same nature by the same witness in order to save the error, if any, in the ruling of the court whereby such testimony was received.

The State claims § 25-1141 does not apply to testimony given by a different witness when no objection is made to that witness' testimony. We agree. Castillas failed to object to Betts' testimony and has therefore waived his objection to such testimony.

PHOTOGRAPHS OF CASTILLAS, DAVIS, FITZGERALD, AND BECKWITH

[7] During the trial, the State introduced four photographs. Three of the photographs show Castillas with a rifle that resembles the .22-caliber rifle allegedly used in the shootings; the fourth does not depict a firearm. Exhibit 93 is a photograph of Castillas holding a .22-caliber rifle and posing alongside Fitzgerald, who is holding Davis' .45-caliber pistol. ***183** Exhibit 94 is a photograph of Castillas posing by himself with a .22-caliber rifle. Exhibit 95 is a photograph of Castillas holding the rifle and posing alongside Beckwith, who is holding Davis' .45-caliber pistol. Castillas objected to these photographs, claiming they were irrelevant, were unfairly prejudicial, and violated § 27-404(2). The court overruled these objections.

Castillas claims the photographs were overly prejudicial. In support of his argument, Castillas attacks the credibility of Fitzgerald, who testified that the photographs were taken the evening of the first shooting. He asks this court to disregard ****264** such testimony, because Fitzgerald lied repeatedly to the police in order to get out of trouble and wrote false accounts of the shootings months after they occurred and because there was no other independent evidence offered to establish that the photographs were taken on the date claimed by Fitzgerald.

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[8] Where the Nebraska Evidence Rules commit the evidentiary question at issue to the discretion of the trial court, the admissibility of evidence is reviewed for an abuse of discretion. State v. Nolan, 283 Neb. 50, 807 N.W.2d 520 (2012). Fitzgerald's credibility does not control the admission of the photographs. On appeal, we do not examine the credibility of the witnesses. Fitzgerald's testimony established that the photographs were taken near the time of the first shooting. Both Davis and Beckwith acknowledged the photographs were taken, and Beckwith acknowledged they were taken on the night of either the first or second shooting.

[9] [10] Whether the evidence was unfairly prejudicial was a decision for the trial court, whose decision we will not reverse unless there is an abuse of discretion. See *id.* The fact that evidence is prejudicial is not enough to require exclusion under § 27-403, because most, if not all, of the evidence a party offers is calculated to be prejudicial to the opposing party; it is only the evidence which has a tendency to suggest a decision on an improper basis that is unfairly prejudicial under § 27-403. State v. Williams, 282 Neb. 182, 802 N.W.2d 421 (2011). We conclude Castillas has not established that the admission of the photographs was unfairly prejudicial. The court did not abuse its discretion in admitting these photographs.

*184 Castillas' argument that the photographs should have been excluded under § 27-404(2) is also without merit. The evidence established that the photographs were taken on or near the night of the first shooting. They were admissible as intrinsic evidence because they corroborated testimony of the witnesses that Castillas had access to and was in possession of a .22-caliber rifle at the time of the shootings.

SUFFICIENCY OF EVIDENCE

[11] [12] In reviewing a sufficiency of the evidence claim, we do not resolve conflicts in the evidence, pass on the credibility of witnesses, or reweigh the evidence; such matters are for the finder of fact. See State v. Howell, 284 Neb. 559, 822 N.W.2d 391 (2012). The relevant question is whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. See *id.* Only where evidence lacks sufficient probative value as a matter of law may an appellate court set aside a guilty verdict as unsupported by evidence beyond a reasonable doubt. *Id.*

Castillas claims that the evidence was insufficient to find him guilty of any of the six counts alleged in the amended information. He claims the State failed to provide even a viable narrative of why the shootings occurred. We disagree. The evidence established that Castillas had a desire to injure Betts.

Castillas asserts that Davis had a stronger motive to commit the crimes, because Davis may have believed that Betts and Harris fired shots at Davis' car. The fact that Davis might have had a motive to injure Betts and Harris supports the evidence that both Castillas and Davis participated in the shootings.

Castillas also argues that the State's dependence upon Davis, Fitzgerald, and Beckwith to support the accusation that Castillas shot at both houses is insufficient, **265 because all three admitted to lying to police when questioned about these incidents.

These arguments have no merit. The credibility of Davis, Fitzgerald, and Beckwith is not part of our review for sufficiency of the evidence. We do not pass on the credibility of witnesses or reweigh the evidence. Viewing the evidence in the light most favorable to the State, a rational trier of fact *185 could have found beyond a reasonable doubt that Castillas committed the crimes charged. Castillas' argument that no rational trier of fact would have found him guilty of these six offenses because the State's witnesses were not credible is without merit.

MOTION TO DISMISS

[13] Castillas claims the court erred in overruling his motion to dismiss, which was made after the State presented its case in chief. After the State rested, Castillas started to make a motion to dismiss. The court stated that Castillas could defer the motion, which he did. Castillas then called

Davis to the stand. Later, while the jury was on a lunch break, Castillas moved to dismiss. He claimed the State had failed to make a prima facie case against him on any of the charges. The court overruled the motion. Castillas then called his final witness, Fitzgerald.

[14] When a court overrules a defendant's motion to dismiss at the close of the State's case in chief and the defendant proceeds to trial and introduces evidence, the defendant waives the appellate right to challenge the trial court's overruling of the motion to dismiss. State v. Dixon, 282 Neb. 274, 802 N.W.2d 866 (2011). Castillas waived his argument by calling Fitzgerald as a witness after the State had rested and after his motion to dismiss was overruled. His assignment of error is without merit.

JURY INSTRUCTION ON FLIGHT

[15] Before the case was submitted to the jury, the court gave Instruction No. 11, which provided:

The voluntary flight of [Castillas] immediately or soon after the occurrence of a crime, with which [Castillas] has been charged, is a circumstance not sufficient of itself to establish guilt, but a circumstance nevertheless which you may consider in connection with all the other evidence in this case to aid you in determining the question of the guilt or innocence of [Castillas].

Whether jury instructions are correct is a question of law, which an appellate court resolves independently of the lower *186 court's decision. State v. Smith, 284 Neb. 636, 822 N.W.2d 401 (2012). Castillas claims he was prejudiced by Instruction No. 11 because the instruction forced the jury to conclude that his departure from Omaha was a flight. He argues that the jury should have been instructed in such a way that they could differentiate between the term "flight" and mere departure. He alleges that there was no way for the jury to discern the difference between flight and departure and that without a definition of flight, the jury would not be able to consider the distinction between the two. He claims there is little evidence in the record to suggest that he left Omaha to avoid apprehension or detection.

Castillas' arguments have no merit. In State v. Lincoln, 183 Neb. 770, 772, 164 N.W.2d 470, 472 (1969), this court upheld the giving of a flight instruction that stated:

"You are instructed that the voluntary flight of a person immediately or soon after the occurrence of a crime, with which the person so fleeing has been charged, is a circumstance, not sufficient of itself to establish guilt, but a circumstance nevertheless which the Jury may **266 consider in connection with all the other evidence in the case to aid you in determining the question of the guilt or innocence of such person."

This instruction is substantively the same as the instruction given in the case at bar.

Beckwith testified that she took Castillas to Crete "days to a week" after the second shooting. She responded "[y]es" when asked whether Castillas had requested to be taken to Crete only after Detective Schneider was "kind of poking around." Beckwith was then asked, "Did [Castillas] tell you why he wanted to be taken to Crete, Nebraska?" Beckwith responded that Castillas said that "if they were looking for anybody they were looking for him." There was sufficient evidence for the jury to infer flight, see State v. Pullens, 281 Neb. 828, 800 N.W.2d 202 (2011), and the court did not err in giving instruction No. 11 to the jury.

Additionally, Castillas did not submit a proposed jury instruction or request a more specific instruction containing a definition of flight. If he desired a more precise jury instruction, *187 Castillas should have requested one at the time the instructions were being considered. See State v. Lewis, 241 Neb. 334, 488 N.W.2d 518 (1992). His failure to offer a more specific instruction precludes his raising this objection on appeal. See State v. Sanders, 269 Neb. 895, 697 N.W.2d 657 (2005).

SENTENCING

[16] Castillas claims that the court erred by imposing sentences which failed to achieve the

court's expressed intent of making Castillas eligible for parole in 25 years. An appellate court will not disturb a sentence imposed within the statutory limits absent an abuse of discretion by the trial court. State v. Kass, 281 Neb. 892, 799 N.W.2d 680 (2011).

At the sentencing hearing, the court initially pronounced consecutive sentences resulting in an aggregate sentence of 50 to 80 years. The court stated: "It means that after 25 years, you'll be considered eligible for consideration—is that right?" The prosecutor and defense counsel then disagreed about the calculation of parole eligibility. In response to defense counsel's statement that the sentence pronounced might make Castillas ineligible for parole for 35 years, the court stated that was not the court's intention. The court then stated:

My intention is that with the **mandatory minimums**, ... Castillas should serve 25 years in the Nebraska Department of Correctional Services after credit for good time. So if the numbers [minimum portion of each sentence] would add up to 30, that would give it a 25-year **mandatory minimum**—25-year minimum, I'm sorry. After mandatory of 20, he would have 10 years for which he would get good time credit, which would be divided in half for the 25. So we will start over.

The court sentenced Castillas to an aggregate prison sentence of 30 to 80 years: 5 to 20 years on counts I and V, for shooting at a dwelling from a vehicle, and 5 to 10 years on counts II, IV, and VI, for use of a weapon to commit a felony, and count III, for second degree assault. All sentences were to be served consecutively.

For its truth in sentencing advisement, the court informed Castillas that he would be sentenced to a total of 30 to 80 ~~*188~~ years, that he would have to serve 25 years to be released on parole, and that after 40 years, if he lost no good time, he would be released.

The statutory sentencing requirements for the charges are as follows:

- Counts I and V: discharging a firearm at a dwelling while in or near a vehicle, a ~~**267~~ violation of § 28-1212.04, Class IC felony, punishable by a **mandatory minimum** of 5 years and a maximum of 50 years. § 28-105(1).
- Counts II, IV, and VI: use of a deadly weapon, a firearm, to commit a felony, a violation of § 28-1205(1)(c), Class IC felony, punishable by a **mandatory minimum** of 5 years and a maximum of 50 years. § 28-105(1).
- Count III: second degree assault, a violation of § 28-309, Class III felony, punishable by a minimum of 1 year and a maximum of 20 years. § 28-105(1).

[17] [18] [19] It is possible, in limited circumstances, to correct an inadvertent mispronouncement of a valid sentence. State v. Clark, 278 Neb. 557, 772 N.W.2d 559 (2009). Hence, it was permissible for the court to resentence Castillas to correct the sentence to match the court's intention. The court stated its intention to structure an aggregate sentence that would result in Castillas' being eligible for parole in 25 years. In imposing a sentence, it is appropriate for a sentencing court to consider how good time credit affects a sentence, that is, when a defendant will be eligible for parole and mandatory release. See State v. Cadwallader, 230 Neb. 881, 434 N.W.2d 506 (1989). The sentences on all six convictions were within the statutory limits. And when a valid sentence has been put into execution, the trial court cannot modify, amend, or revise it in any way, either during or after the term or session of court at which the sentence was imposed. State v. Clark, *supra*.

Though the sentences pronounced were valid, they did not match the court's intention. The court miscalculated when Castillas would be eligible for parole and for mandatory discharge.

Parole eligibility is governed by Neb. Rev. Stat. § 83-1.110 (Reissue 2008), which provides in relevant part: "(1) Every committed offender shall be eligible for parole when the ~~*189~~ offender has served one-half the minimum term of his or her sentence as provided in [§] 83-1.107.... No such

reduction of sentence shall be applied to any sentence imposing a **mandatory minimum** term." Pursuant to Neb.Rev.Stat. § 83-1,107(2)(a) and (3) (Cum. Supp. 2012), the term of a committed offender is reduced "by six months for each year of the offender's term and pro rata for any part thereof which is less than a year," but "reductions of terms ... may be forfeited, withheld, and restored" by correctional facility officials. Section 83-1,110 makes clear that these good time reductions do not apply to **mandatory minimum** sentences.

In Johnson v. Kenney, 265 Neb. 47, 654 N.W.2d 191 (2002), we considered whether good time credit should be applied to the maximum portion of a sentence before the **mandatory minimum** sentence had been served. We held that it could not, because good time credit applies only after the **mandatory minimum** has been served. One of the purposes behind § 83-1,107, the good time credit statute, was to ensure that no one would reach mandatory discharge before reaching parole eligibility. We stated in Johnson v. Kenney, supra, that it would defeat the legislative intent if a defendant reached mandatory discharge before being eligible for parole, because the minimum portion of the sentence would have no meaning.

In calculating parole eligibility in State v. Kinser, 283 Neb. 560, 811 N.W.2d 227 (2012), this court held that a defendant must serve the **mandatory minimum** plus one-half of the remaining minimum sentence before becoming eligible for parole. A jury found William D. Kinser, Jr., guilty of felony flight to avoid arrest. After finding that he had five previous felony convictions, the district court concluded that Kinser**268 was a habitual criminal and sentenced him to a term of not less than 18 nor more than 30 years' imprisonment. Kinser argued that the sentencing order must be reversed because the court intended for him to be eligible for parole after 10 years, whereas under the sentence imposed, he would not be eligible for parole for 14 years.

We held that with the minimum sentence of 18 years, Kinser was required to serve a minimum of 10 years plus one-half of *190 the remaining 8 years before he would be eligible for parole. During sentencing, the court had stated:

"[Kinser] will be sentenced ... [o]n Count I [fleeing to avoid arrest], which is the felony, [to] not less than 18 years and not more than 30 years. The minimum will include the **mandatory minimum** of 10 years with a two-year revocation of his license. Those sentences will be served concurrent. I give him credit for 190 days that he has served."

Id. at 568-69, 811 N.W.2d at 233.

On appeal, Kinser claimed that the district court erred in sentencing him as a habitual criminal and in imposing an erroneous sentence. We found that the sentencing court did not clearly state that Kinser would be eligible for parole after serving 10 years, but that even if it had, the question would be resolved by Neb.Rev.Stat. § 29-2204(1) (Reissue 2008). Any discrepancy between the minimum sentence of 18 years for Kinser's flight to avoid arrest conviction and the statements of the sentencing court regarding parole eligibility would be controlled by the court's statements with regard to the minimum sentence. Pursuant to our holding in Johnson v. Kenney, 265 Neb. 47, 654 N.W.2d 191 (2002), good time credit would not reduce the 10-year **mandatory minimum** portion of Kinser's sentence for flight to avoid arrest. Thus, assuming no loss of good time credit, Kinser was required to serve the 10-year **mandatory minimum** plus 4 of the remaining 8 years of the minimum sentence, less credit for time served, before becoming eligible for parole.

Logically, a defendant must serve the **mandatory minimum** portion of a sentence before earning good time credit toward the maximum portion of the sentence. Johnson v. Kenney, supra, indicates that a defendant receives no good time credit until after serving any **mandatory minimum**. Thus, a defendant would be unable to earn good time credit against either the minimum or maximum sentence until the defendant had served the **mandatory minimum** sentence. As noted in State v. Kinser, supra, the parole eligibility date is determined by subtracting the **mandatory minimum** sentence from the court's minimum sentence, halving the difference, and adding that difference to *191 the **mandatory minimum**. Similarly, the mandatory discharge date is computed by subtracting the **mandatory minimum** sentence from the maximum sentence, halving the difference, and adding that difference to the **mandatory minimum**.

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Mandatory minimum sentences cannot be served concurrently. A defendant convicted of multiple counts each carrying a **mandatory minimum** sentence must serve the sentence on each count consecutively.

Accordingly, the court was required to sentence Castillas to consecutive terms for each conviction carrying a **mandatory minimum**. The court incorrectly computed Castillas' parole eligibility date because it mistakenly used 20 years as the **mandatory minimum** sentence instead of the required 25 years. Five of the convictions were Class IC felonies, each carrying a mandatory 5-year minimum. See § 28-105(1).

****269** Castillas was sentenced to 30 to 80 years. Subtracting the **mandatory minimum** sentence, 25 years, from the court's minimum sentence, 30 years, leaves 5 years for which Castillas could receive good time credit. Castillas must serve half of those 5 years, or 2 1/2 years, plus the **mandatory minimum** of 25 years before becoming eligible for parole. Accordingly, under the court's sentence, Castillas would be eligible for parole in 27 1/2 years, assuming no loss of good time.

Similarly, subtracting the **mandatory minimum** sentence of 25 years from the maximum sentence of 80 years leaves 55 years for which Castillas could receive good time credit. Castillas must serve half of those 55 years, or 27 1/2 years, plus the **mandatory minimum** of 25 years before becoming eligible for mandatory release. Accordingly, under the court's sentence, Castillas would reach his mandatory discharge date in 52 1/2 years, assuming no loss of good time.

In summary, based on the sentences pronounced by the court, Castillas will be eligible for parole in 27 1/2 years and eligible for mandatory discharge in 52 1/2 years, assuming no loss of good time. However, the court told Castillas that he would be eligible for parole in 25 years and subject to mandatory discharge in 40 years, assuming no loss of good time.

[20] If there is a conflict between the court's sentence and its truth in sentencing advisement, the statements of ***192** the minimum and maximum limits control. Pursuant to § 29-2204(1), in imposing an indeterminate sentence upon an offender, the court shall:

(A) Fix the minimum and maximum limits of the sentence to be served within the limits provided by law for any class of felony other than a Class IV felony....

....

(b) Advise the offender on the record the time the offender will serve on his or her minimum term before attaining parole eligibility assuming that no good time for which the offender will be eligible is lost; and

(c) Advise the offender on the record the time the offender will serve on his or her maximum term before attaining mandatory release assuming that no good time for which the offender will be eligible is lost.

If any discrepancy exists between the statement of the minimum limit of the sentence and the statement of parole eligibility or between the statement of the maximum limit of the sentence and the statement of mandatory release, the statements of the minimum limit and the maximum limit shall control the calculation of the offender's term.

Castillas argues that because the court intended to give an aggregate sentence making him eligible for parole after 25 years, the intention of the sentencing court should prevail. Castillas asserts that because the sentences rendered in this case clearly did not comport with the intention of the court, the sentences are erroneous. He requests that this court remand the cause for resentencing in conformity with the trial court's articulated intentions.

Castillas' actual aggregate sentence is computed based on the court's statement of the minimum

and maximum limits of 30 to 80 years. As computed above, Castillas will be eligible for parole in 27 1/2 years and subject to mandatory discharge in 52 1/2 years, assuming no loss of good time.

Castillas was sentenced after he was convicted; therefore, no prejudice based on the court's mathematical error has been shown. He was given valid sentences within the statutory range, even though the sentences were contrary to the court's ~~**270 *193~~ Intentions. If any discrepancy exists between the statement of the minimum limit of the sentence and the statement of parole eligibility or between the statement of the maximum limit of the sentence and the statement of mandatory release, the statements of the minimum limit and maximum limit shall control the calculation of the offender's term. See § 29-2204(1).

CONCLUSION

For the reasons set forth, we find no merit to any of Castillas' assignments of error. We therefore affirm the judgments of conviction and the sentences imposed.

AFFIRMED.

CASSEL, J., not participating.

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- [2012 WL 2369954](#) (Appellate Brief) Response In Opposition to Petition to Bypass (May 29, 2012) [Original Image of this Document \(PDF\)](#)
- [2012 WL 5971132](#) (Appellate Brief) Reply Brief of Appellant (May 29, 2012) [Original Image of this Document \(PDF\)](#)
- [2012 WL 5971131](#) (Appellate Brief) Brief of Appellant (Feb. 3, 2012) [Original Image of this Document \(PDF\)](#)

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Judges

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- **Connolly, Hon. William M.**
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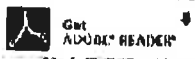
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265 Neb. 47, 654 N.W.2d 191

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[Judges and Attorneys](#)Supreme Court of Nebraska.
James JOHNSON, Appellee,
v.
Mike KENNEY, Appellant.No. S-02-202.
Dec. 20, 2002.

Subsequent to Defendant pled guilty of delivery of a controlled substance and being a habitual criminal, defendant filed petition seeking habeas corpus relief. The District Court, Lancaster County, Paul D. Merritt, Jr., J., found defendant was being detained without legal authority and ordered that he be discharged. State appealed. The Supreme Court, Wright, J., held that statute requiring executive officer of correctional facility to reduce term of committed offender for good behavior did not apply to reduce mandatory minimum sentences imposed on habitual criminals.

Reversed and remanded with directions to dismiss.

West Headnotes

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

- [110 Criminal Law](#)
 - [110XXIV Review](#)
 - [110XXIV\(L\) Scope of Review In General](#)
 - [110XXIV\(L\)4 Scope of Inquiry](#)
 - [110k1134.29 k. Constitutional Issues In general. Most Cited Cases](#)
(Formerly 110k1134(3))

Interpretation of a statute presents a question of law, in connection with which an appellate court has an obligation to reach an independent conclusion irrespective of the decision made by the court below.

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

- [310 Prisons](#)
 - [310II Prisoners and Inmates](#)
 - [310II\(F\) Duration of Confinement](#)
 - [310k243 Good Conduct or Other Earned Credits Against Sentence](#)
 - [310k245 Right to Credits; Eligibility and Entitlement](#)
 - [310k245\(3\) k. Particular Issues and applications. Most Cited Cases](#)
(Formerly 310k15(3))
- [350H Sentencing and Punishment](#) [KeyCite Citing References for this Headnote](#)
 - [350HVI Habitual and Career Offenders](#)
 - [350HVI\(L\) Punishment](#)
 - [350Hk1400 k. In general. Most Cited Cases](#)

Statute requiring executive officer of correctional facility to reduce term of committed offender for good behavior did not apply to reduce mandatory minimum sentences imposed on habitual criminals, given legislative history stating that no person sentenced to mandatory term under habitual criminal sentencing statutes would be eligible for reductions for good time, and other relevant statutes; intent of habitual criminal sentencing would be thwarted if good time credit were applied to maximum term of sentence before mandatory minimum sentence had been served. Neb.Rev.St. §§ 29-2221, 83-1,107.

[3] KeyCite Citing References for this Headnote

- ↳ 361 Statutes
 - ↳ 361III Construction
 - ↳ 361III(C) Clarity and Ambiguity; Multiple Meanings
 - ↳ 361k1101 k. In general. Most Cited Cases
(Formerly 361k190)

A statute is open for construction only when the language used requires interpretation or may reasonably be considered ambiguous.

[4] KeyCite Citing References for this Headnote

- ↳ 361 Statutes
 - ↳ 361III Construction
 - ↳ 361III(C) Clarity and Ambiguity; Multiple Meanings
 - ↳ 361k1102 k. What constitutes ambiguity; how determined. Most Cited Cases
(Formerly 361k190)

↳ 361 Statutes KeyCite Citing References for this Headnote

- ↳ 361III Construction
 - ↳ 361III(G) Other Law, Construction with Reference to
 - ↳ 361k1210 Other Statutes
 - ↳ 361k1216 Similar or Related Statutes
 - ↳ 361k1216(3) k. In pari materia. Most Cited Cases
(Formerly 361k190)

A statute is ambiguous when the language used cannot be adequately understood either from the plain meaning of the statute or when considered in pari materia with any related statutes.

[5] KeyCite Citing References for this Headnote

- ↳ 361 Statutes
 - ↳ 361III Construction
 - ↳ 361III(A) In General
 - ↳ 361k1074 Purpose
 - ↳ 361k1075 k. In general. Most Cited Cases
(Formerly 361k184)

↳ 361 Statutes KeyCite Citing References for this Headnote

- ↳ 361IV Operation and Effect
 - ↳ 361k1402 Construction In View of Effects, Consequences, or Results
 - ↳ 361k1403 k. In general. Most Cited Cases
(Formerly 361k184)

In construing a statute, a court must look to the statute's purpose and give the statute a

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reasonable construction which best achieves that purpose, rather than a construction which would defeat it.

[6] KeyCite Citing References for this Headnote

361 Statutes

- 361III Construction
 - 361III(A) In General
 - 361k1078 Language
 - 361k1080 k. Language and Intent, will, purpose, or policy. Most Cited Cases
(Formerly 361k184)

361 Statutes KeyCite Citing References for this Headnote

- 361III Construction
 - 361III(B) Plain Language; Plain, Ordinary, or Common Meaning
 - 361k1091 k. In general. Most Cited Cases
(Formerly 361k184)

361 Statutes KeyCite Citing References for this Headnote

- 361III Construction
 - 361III(E) Statute as a Whole; Relation of Parts to Whole and to One Another
 - 361k1151 k. In general. Most Cited Cases
(Formerly 361k184)

In construing a statute, a court must determine and give effect to the purpose and Intent of the Legislature as ascertained from the entire language of the statute considered in its plain, ordinary, and popular sense.

[7] KeyCite Citing References for this Headnote

361 Statutes

- 361III Construction
 - 361III(M) Presumptions and Inferences as to Construction
 - 361k1381 Other Law, Construction with Reference to
 - 361k1386 k. Change in law. Most Cited Cases
(Formerly 361k212.7)

If, in a subsequent enactment on the same or similar subject, the Legislature uses different terms in the same connection, a court interpreting the subsequent enactment must presume that the Legislature intended a change in the law.

****192 Syllabus by the Court**

***47 1. Statutes: Appeal and Error.** Interpretation of a statute presents a question of law, in connection with which an appellate court has an obligation to reach an independent conclusion irrespective of the decision made by the court below.

2. Statutes. A statute is open for construction only when the language used requires interpretation or may reasonably be considered ambiguous.

3. Statutes. A statute is ambiguous when the language used cannot be adequately understood either from the plain meaning of the statute or when considered in pari materia with any related statutes.

4. **Statutes.** In construing a statute, a court must look to the statute's purpose and give the statute a reasonable construction which best achieves that purpose, rather than a construction which would defeat it.

5. **Statutes: Legislature: Intent.** In construing a statute, a court must determine and give effect to the purpose and intent of the Legislature as ascertained from the entire language of the statute considered in its plain, ordinary, and popular sense.

6. **Statutes: Legislature: Intent: Presumptions.** If, in a subsequent enactment on the same or similar subject, the Legislature uses different terms in the same connection, a court interpreting the subsequent enactment must presume that the Legislature intended a change in the law.

Don Stenberg, Attorney General, and Linda L. Willard, Lincoln, for appellant.

Stephanie J. Garner Kotik, of Cleveland Law Offices, for appellee, and, on brief, James Johnson, pro se.

*48 HENDRY, C.J., and WRIGHT, CONNOLLY, GERRARD, STEPHAN, MCCORMACK, and MILLER-LERMAN, JJ.

WRIGHT, J.

NATURE OF CASE

James Johnson pled guilty to charges of delivery of a controlled substance and being a habitual criminal, and he was sentenced to 10 years' imprisonment. Johnson subsequently filed a petition seeking habeas corpus relief, alleging that pursuant to Neb. Rev. Stat. § 83-1,107(1) (Reissue 1994), he was entitled to have his sentence reduced by 6 months for each year of the sentence and that as a result of not receiving such sentence reduction, he was being wrongfully held. (Although § 83-1,107 has subsequently been amended, all references in this opinion are to Reissue 1994.) The district court for Lancaster County found that Johnson was being detained without legal authority and ordered that he be discharged from the custody of the Department of Correctional Services (Department). Mike Kenney, warden of the Nebraska State Penitentiary, appeals.

SCOPE OF REVIEW

[1] Interpretation of a statute presents a question of law, in connection with which an appellate court has an obligation to reach an independent conclusion irrespective of the decision made by the court below. State v. Mather, 264 Neb. 182, 646 N.W.2d 605 (2002).

**193 FACTS

On September 16, 1996, Johnson pled guilty to charges of delivery of a controlled substance and being a habitual criminal. Thereafter, he was sentenced to a term of 10 years' imprisonment with credit for 243 days previously served.

On March 12, 2001, Johnson filed a pro se petition for writ of habeas corpus, seeking relief under Neb. Rev. Stat. § 29-2801 et seq. (Reissue 1995). Johnson alleged that pursuant to Nebraska's "good time statute," § 83-1,107(1), he was entitled to have his sentence reduced by 6 months for each year of the sentence, and that Kenney had failed to give him that credit. Johnson claimed that as a result of Kenney's failure to give Johnson good time credit, he was being wrongfully held by the Department.

*49 Johnson was sentenced pursuant to Neb. Rev. Stat. § 29-2221(1) (Reissue 1995), which requires a mandatory minimum term of 10 years in prison for a habitual criminal conviction. Throughout these proceedings, Kenney has maintained that good time credit required by § 83-1,107(1) does not apply to a mandatory minimum sentence imposed under § 29-2221(1).

The trial court found that Johnson was entitled to receive good time credit of 6 months for each year of the sentence imposed. The court concluded that with a proper application of good time credit,

the maximum portion of Johnson's sentence should have been reduced to 5 years. Finding that no evidence had been presented to establish that Johnson had lost any of his good time credit, the court determined that Johnson was being detained without legal authority and ordered that he be discharged. Kenney filed a timely notice of appeal, and we granted Johnson's petition to bypass.

ASSIGNMENT OF ERROR

Kenney asserts, restated, that the trial court erred in finding that good time credit applies to mandatory minimum sentences imposed on habitual criminals under § 29-2221(1).

ANALYSIS

The issue presented is one of statutory interpretation: whether the good time credit set forth in § 83-1,107(1) applies to the mandatory minimum sentence imposed upon Johnson pursuant to § 29-2221(1). We first set forth the relevant portions of each statute.

Before it was amended by 1995 Neb. Laws, L.B. 371, § 29-2221 provided that the minimum sentence imposed on a person found to be a habitual criminal was a term of not less than 10 years. See § 29-2221 (Cum.Supp.1994). As amended by L.B. 371, § 29-2221(1) provides that a habitual criminal "shall be punished by imprisonment ... for a mandatory minimum term of ten years and a maximum term of not more than sixty years." L.B. 371 became operative on September 9, 1995, and is applicable to Johnson's case.

The relevant version of § 83-1,107 provides:

(1) The chief executive officer of a facility shall reduce the term of a committed offender by six months for each *50 year of the offender's term and pro rata for any part thereof which is less than a year. The total of all such reductions shall be credited from the date of sentence, which shall include any term of confinement prior to sentence and commitment as provided pursuant to section 83-1,106, and shall be deducted:

(a) From the minimum term, to determine the date of eligibility for release on parole; and

**194 (b) From the maximum term, to determine the date when discharge from the custody of the state becomes mandatory.

In granting Johnson habeas corpus relief, the trial court stated it was clear that § 29-2221(1) required a sentencing court in every case to impose a mandatory minimum sentence of 10 years. It noted, however, that such a requirement did not answer the question of whether Johnson, who received a straight sentence of 10 years, which represented both the mandatory minimum and the maximum sentence, was entitled to receive good time credit against his sentence.

The trial court stated that although the imposition of a mandatory minimum sentence affects a person's eligibility for probation and parole, § 83-1,107 does not address the effect imposition of a mandatory minimum sentence has on the application of good time credit to the maximum portion of the sentence. In essence, the court concluded that § 83-1,107 does not specifically exclude application of good time to the maximum portion of the sentence when a mandatory minimum sentence has been imposed. Finding no ambiguities in § 83-1,107, the court stated there was no need to resort to judicial interpretation nor any need to look to the legislative intent.

[2] [3] [4] We disagree with the trial court's finding that § 83-1,107 is not ambiguous. A statute is open for construction only when the language used requires interpretation or may reasonably be considered ambiguous. State v. Hochstein and Anderson, 262 Neb. 311, 632 N.W.2d 273 (2001). A statute is ambiguous when the language used cannot be adequately understood either from the plain meaning of the statute or when considered in pari materia with any related statutes. Premium Farms v. County of Holt, 263 Neb. 415, 640 N.W.2d 633 (2002). It is undisputed that a *51 habitual criminal sentenced under § 29-2221 may not be released on parole until the individual has served the mandatory minimum sentence of 10 years. The fact that § 83-1,107 does not address whether good time may be applied to the maximum term of the sentence when the mandatory

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minimum and the maximum term are the same number of years gives rise to the ambiguity.

When the relevant statutes are considered in pari materia, the intent of habitual criminal sentencing is thwarted if good time credit is applied to the maximum term of the sentence before the mandatory minimum sentence has been served. The minimum portion of the sentence would have no meaning.

In 1992, the Legislature passed L.B. 816, which made significant changes to the law regarding good time credit for criminal offenders under § 83-1,107. In explaining one of the purposes of the changes, the introducer, Senator Ernie Chambers, stated:

The other significant effects of this bill is [sic] that no one will become eligible for parole after their mandatory discharge date.... Under the current law, a person can reach a date when they must be discharged before they are even eligible to be considered for parole. Since they must mandatorily be discharged before the Parole Board can even consider their case, there is no way for there to be Parole Board supervision.

Floor Debate, 92d Leg., 2d Sess. 7678 (Jan. 14, 1992).

Under the trial court's interpretation, the application of good time credit to the maximum portion of the sentence would result in a mandatory discharge before Johnson was eligible for parole under the minimum portion of the sentence. Johnson's maximum sentence and mandatory ****195** minimum sentence are both 10 years. Although he could not be released on parole, Johnson would receive a mandatory discharge from custody after only 5 years if good time reductions were applied to the maximum portion of the sentence.

Section 29-2221(1) requires that a habitual criminal "shall be punished by imprisonment ... for a mandatory minimum term of ten years." It is clear the Legislature intended that imposition of a mandatory minimum sentence would result in a person's not being eligible for parole until the mandatory minimum sentence had been served. It would not serve the legislative intent if a ***52** defendant could be mandatorily discharged before being eligible for parole.

[5] [6] The language of § 83-1,107 cannot be adequately understood when considered in pari materia with related statutes. See Premium Farms v. County of Holt, 263 Neb. 415, 640 N.W.2d 633 (2002). In construing a statute, a court must look to the statute's purpose and give the statute a reasonable construction which best achieves that purpose, rather than a construction which would defeat it. State v. Portsche, 261 Neb. 160, 622 N.W.2d 582 (2001). In construing a statute, a court must determine and give effect to the purpose and intent of the Legislature as ascertained from the entire language of the statute considered in its plain, ordinary, and popular sense. State v. Baker, 264 Neb. 867, 652 N.W.2d 612 (2002).

[7] Prior to its amendment, § 29-2221 provided that the sentence for a habitual criminal would be not less than 10 years. Section 29-2221 was subsequently amended to state that the sentence would be a mandatory minimum term of 10 years. If, in a subsequent enactment on the same or similar subject, the Legislature uses different terms in the same connection, a court interpreting the subsequent enactment must presume that the Legislature intended a change in the law. State v. Portsche, 258 Neb. 926, 606 N.W.2d 794 (2000).

Therefore, presuming that the Legislature intended a change in § 29-2221, we look to the legislative history concerning L.B. 371 in order to determine the Legislature's intent. The "Summary of Intent, provided: "Habitual Criminal Sentencing ... No person sentenced to a mandatory term under these statutes would be eligible for probation or reductions for 'good time.'" Judiciary Committee Hearing, 94th Leg., 1st Sess. (Feb. 8, 1995). The floor debate concerning L.B. 371 also supports this position.

From our review of the legislative history, we conclude the Legislature did not intend that good

654 N.W.2d 191

time credit under § 83-1,107(1) would apply to reduce mandatory minimum sentences imposed on habitual criminals under § 29-2221. Interpretation of a statute presents a question of law, in connection with which an appellate court has an obligation to *53 reach an independent conclusion irrespective of the decision made by the court below. State v. Mather, 264 Neb. 182, 646 N.W.2d 605 (2002).

CONCLUSION

The trial court erred in finding that good time credit under § 83-1,107(1) applies to mandatory minimum sentences imposed on habitual criminals pursuant to § 29-2221(1). The judgment of the trial court is reversed, and the cause is remanded with directions to dismiss Johnson's petition for writ of habeas corpus.

REVERSED AND REMANDED WITH DIRECTIONS TO DISMISS.

Neb., 2002.
Johnson v. Kenney
265 Neb. 47, 654 N.W.2d 191

Briefs and Other Related Documents ([Back to top](#))

- [2002 WL 34400182](#) (Appellate Brief) Brief of Appellee (Sep. 5, 2002) [Original Image of this Document \(PDF\)](#)
- [2002 WL 34402541](#) (Appellate Brief) Brief of Appellant (May 7, 2002)

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

[Judges](#) | [Attorneys](#)

Judges

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

State of Nebraska Supreme Court
Lincoln, Nebraska 68509

[Litigation History Report](#) | [Judicial Reversal Report](#) | [Judicial Expert Challenge Report](#) | [Profiler](#)

- **Gerrard, Hon. John Melvin**

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

[Litigation History Report](#) | [Judicial Motion Report](#) | [Judicial Reversal Report](#) | [Judicial Expert Challenge Report](#) | [Profiler](#)

- **Hendry, Hon. John V.**

State of Nebraska Supreme Court
Lincoln, Nebraska 68509

[Litigation History Report](#) | [Judicial Reversal Report](#) | [Profiler](#)

- **McCormack, Hon. Michael**

State of Nebraska Supreme Court
Lincoln, Nebraska 68509

[Litigation History Report](#) | [Judicial Reversal Report](#) | [Judicial Expert Challenge Report](#) | [Profiler](#)

- **Merritt, Hon. Paul D. Jr.**

State of Nebraska District Court, 3rd District
Lincoln, Nebraska 68508

[Litigation History Report](#) | [Judicial Reversal Report](#) | [Judicial Expert Challenge Report](#) | [Profiler](#)

- **Stephan, Hon. Kenneth C.**

State of Nebraska Supreme Court
Lincoln, Nebraska 68509

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• **Wright, Hon. John F.**

State of Nebraska Supreme Court
Lincoln, Nebraska 68509

[Litigation History Report](#) | [Judicial Reversal Report](#) | [Judicial Expert Challenge Report](#) | [Profiler](#)

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[Litigation History Report](#) | [Profiler](#)

Attorneys for Appellee

• **Kotik, Stephanie Garner**

Lincoln, Nebraska 68508

[Litigation History Report](#) | [Profiler](#)

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

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From: Houston, Bob
Sent: Tuesday, February 26, 2013 5:23 PM
To: Foster, Kathy; Wellage, Mark
Cc: White, Cameron; Bullock, Evelyn; Kohl, Randy; Hopkins, Frank
Subject: RE: FW: Mr. Nikko Jenkins, #59478

Thanks, Folks

Kathy and Cameron.....would you two mind taking the lead in gathering information on how we care for Mr. Jenkins. Thanks. This will help us do two things: first, we can help others understand what assistance we can and will provide for Inmate Jenkins; but secondly, we can draft policy and best practices for future cases. This multi-disciplinary team you are assembling is not only awesome, but will be a model we can be proud of as we continually strive to protect the public one inmate at a time.

Bob

From: Foster, Kathy
Sent: Tuesday, February 26, 2013 3:57 PM
To: Wellage, Mark
Cc: White, Cameron; Bullock, Evelyn; Houston, Bob; Kohl, Randy; Hopkins, Frank
Subject: RE: FW: Mr. Nikko Jenkins, #59478

Ok. Thank you!

Kathy Foster, LICSW
 NDCS Director of Social Work
 Nebraska State Penitentiary
 4201 S. 14th Street
 Lincoln, NE 68502
 Phone: (402) 479-3094
 Fax: (402) 479-3028
 Cell:
 email: kathy.foster@nebraska.gov




From: Wellage, Mark
Sent: Tuesday, February 26, 2013 3:40 PM
To: Foster, Kathy
Cc: White, Cameron; Bullock, Evelyn; Houston, Bob; Kohl, Randy; Hopkins, Frank
Subject: RE: FW: Mr. Nikko Jenkins, #59478

let me or mental health in Tecumseh know when you are coming and we can setup a time to let you watch it in the monitoring room

Sent from my Verizon Wireless 4G LTE DROID

"Foster, Kathy" <kathy.foster@nebraska.gov> wrote:

How can I access the video visit to watch?

Kathy Foster, LICSW
 NDCS Director of Social Work
 Nebraska State Penitentiary
 4201 S. 14th Street
 Lincoln, NE 68502
 Phone: (402) 479-3094
 Fax: (402) 479-3028
 Cell: 
 email: kathy.foster@nebraska.gov



From: Wellage, Mark
Sent: Tuesday, February 26, 2013 3:10 PM
To: White, Cameron
Cc: Foster, Kathy; Bullock, Evelyn; Houston, Bob; Kohl, Randy; Hopkins, Frank
Subject: Re: FW: Mr. Nikko Jenkins, #59478

I will work on gathering information.

It may be helpful for Kathy and Evelyn to watch the video visit Mr Jenkins had with his family on Feb 13. It may provide an additional framework on what to expect as they begin to discuss discharge plans with Mr. Jenkins. I am scheduled to see him next Tuesday.

Mark

Sent from my Verizon Wireless 4G LTE DROID

"White, Cameron" <Cameron.White@nebraska.gov> wrote:

Good afternoon. Please see the below email from James Davis to Dr. Kohl regarding Inmate Jenkins #59478. Dr. Kohl, Mr. Hopkins and I met with the Director today to discuss follow up. The recommendation is that we document what we are currently doing in this case and also have Kathy and Evelyn provide some assistance. Mr. Hopkins is gathering information about his current placement and historical information. We plan to relay the information to James on 3-4 prior to another meeting he will be attending at Central Office that day. The specific follow up plan is the following:

1. Mark—gather and send me a summary of prior Behavioral Health activity on this case including contacts and treatment plans. I know you have done assessment and met with him over time. Please specifically comment on any release planning activities. Please confirm that there is a signed release in place allowing us to discuss the case in detail. Need info late this week since our meeting is on 3-4.
2. Kathy and Evelyn—please schedule a time to have an initial meeting with Mr. Jenkins to discuss release planning and let us know the specific date. You may want to visit with him together for efficiency.

Thank you.

Cameron S. White, Ph.D.
Behavioral Health Administrator, NDCS
Licensed Psychologist
Licensed Nursing Home Administrator

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

NDCS Central Office
P.O. Box 94661
Lincoln, Nebraska 685509-4661

From: James Davis [<mailto:jdavis@leg.ne.gov>]
Sent: Monday, February 25, 2013 3:15 PM
To: Kohl, Randy
Cc: Cynthia Grandberry; Houston, Bob; Moreland, Jerral; Hopkins, Frank
Subject: Mr. Nikko Jenkins, #59478

Dr. Kohl:

I am requesting a meeting with you, Deputy Director Frank Hopkins, and Dr. White in regards to Mr. Nikko Jenkins transition plan and mental health status. Mr. Jenkins has a tentative release date of July 2013. However, it appears that his time being served is because of a loss of good-time. It is our understanding that Mr. Jenkins could of mandatory jammed February of 2012. The concerns with Mr. Jenkins case is that he may pose a safety risk to the community of District # 11, without providing him with the necessary tools to succeed in the community. I have discussed this matter with Senator Chambers and he would like to know what treatment plans have been made for Mr. Jenkins to return to the community, instead of being released directly from Administrative Confinement to the community. I am requesting a meeting to take place at the State Capitol no later than March 7, 2013. Please bring all materials and documents to discuss Mr. Jenkins case in detail.

For clarification, please contact me or Jerral Moreland.

Respectfully,

James Davis III

JAMES DAVIS III,
Deputy Ombudsman for Corrections
STATE OF NEBRASKA
OFFICE OF THE PUBLIC COUNSEL/
State Capitol Building, P.O. Box 94604
Lincoln, Nebraska 68509-4604
Office 402-471-4195
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Toll Free 800-742-7690
jdavis@leg.ne.gov

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From: Houston, Bob
Sent: Friday, March 15, 2013 6:16 AM
To: Wayne, Larry; White, Cameron; Foster, Kathy
Subject: Re: Nikko Jenkins -

Larry,

Thanks.....you, Frank and myself can review this plan with Cameron and Kathy Foster. I agree with Cameron especially considering that the Jenkins case arose out of a written public document from Jerall. The informal discussion opportunity was on the front end of this case.....not the back end. If we have a carefully crafted discharge plan and follow it, we are meeting and exceeding our obligation to public safety.

Thanks,

Bob

Sent from my Samsung Galaxy Tab 10.1

"Wayne, Larry" <Larry.Wayne@nebraska.gov> wrote:
 Bob, you and I discussed this meeting yesterday. It is to set up a discharge plan for Mr. Jenkins. No one will be asked to defend anything. Do you want me to ask them again to attend?

Sent from my Verizon Wireless 4G LTE DROID

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

Subject: Re: Nikko Jenkins -
From: "Green, George" <George.Green@nebraska.gov>
To: "Wayne, Larry" <Larry.Wayne@nebraska.gov>
CC: "Kohl, Randy" <Randy.Kohl@nebraska.gov>

I agree. Treatment Staff should not be called upon to spend their resources defending themselves.

Connected by DROID on Verizon Wireless

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

From: "Wayne, Larry" <Larry.Wayne@nebraska.gov>
To: "Wayne, Larry" <Larry.Wayne@nebraska.gov>
Cc: "Kohl, Randy" <Randy.Kohl@nebraska.gov>, "Green, George" <George.Green@nebraska.gov>
Sent: Thu, Mar 14, 2013 21:32:39 GMT+00:00
Subject: FW: Nikko Jenkins -

.arry,

I'm not sure we want to meet with Jerall about Jenkins. I recommend that this is kept to email correspondence based on recent meetings. Any questions should be able to be covered in writing. Thanks.

Cameron

Cameron S. White, Ph.D.
Behavioral Health Administrator, NDCS
Licensed Psychologist
Licensed Nursing Home Administrator

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

NDCS Central Office
P.O. Box 94661
Lincoln, NE 68509-4661

From: Young, Konda on behalf of Wayne, Larry
Sent: Thursday, March 14, 2013 4:23 PM
To: Foster, Kathy; Moreland, Jerall; White, Cameron; Wayne, Larry
Subject: Nikko Jenkins -
When: Wednesday, March 20, 2013 2:00 PM-3:30 PM.
Where: TBA

1-865

MEMORANDUM

TO: Robert P. Houston, Director

DATE: June 12, 2013

RE: Policy Development for Inmates on Administrative Confinement Approaching Release

FROM: Larry Wayne, Deputy Director,

In reviewing overall Administrative Confinement policy and procedure the issue of inmates approaching release from prison while on Administrative Confinement was discussed at a meeting on June 10, 2013, between Kathy Foster, Social Work Director, Dr. Mark Wellage, Assistant Administrator for Behavioral Health, Mental Health, Teresa Bittenger, Parole Supervisor for Reentry, and Larry Wayne. By way of background, we discussed three current inmates and the challenges they pose as they are somewhat instructive for the review and addressing of overall concerns in this area:

Nikko Jenkins, #59478: Mr. Jenkins has served much of the last few years on Administrative Confinement. More recently, external stakeholders have identified Jenkins upcoming July 30th mandatory discharge date as a concern. To address this, Jenkins (per his own request) was transferred from TSCI SMU to the Penitentiary Control Unit earlier this year. He appeared to be demonstrating progress in his new environment and was subsequently placed on the Transition Confinement program. After this, Jenkins again reverted to his more manipulative behavior. This included writing the Douglas County Attorney to plead his case for Regional Center Commitment and declining medication from Psychiatrist Dr. Jack. Ultimately, Mr. Jenkins cannot seem to discontinue his thinking that he will have an easier life if referred and/or committed to the Regional Center. His mother has indicated she will let him live with her, but Mr. Jenkins insists he has a number of women who want him to live with them. Ms. Foster says the best we can do as he approaches his July 30th release is to provide him with a list of people he can seek out should he decide he wants assistance. Referral for programming assistance upon release is not prudent given Mr. Jenkins current attitude of resistance.

_____ / Mr. _____ is another inmate approaching mandatory discharge in November of 2013. Mr. _____ is presently confined at the TSCI SMU. He has engaged in a number of inappropriate behaviors resulting in a longer term placement at Administrative Confinement while generally being disagreeable and uncooperative with staff attempting to work with him. Dr. Wellage indicated most recently Mr. _____ was recommended for placement in general population with a time of transition at Work Release prior to his mandatory discharge. Dr. Wellage further indicated Hurlbut was noncompliant with all mental health interventions, but eventually agreed to assessment from clinical staff. This revealed a personality disorder with substance abuse, but no significant mental health issues. In short, Mr. _____ is an angry, noncompliant individual who continues to decline or refuse psychologists visits as offered. He claims he has family in Iowa who will take him upon his November discharge. We will attempt to expedite Mr. _____ transfer to community corrections to assist him with transition in this area.

1-866

Mr. _____ has been housed in the Nebraska State Penitentiary Control Unit since his admission and lost all good time due to repeated acting out behavior. His 2023 tentative release date removes immediacy from discharge planning, but still makes him worthy of consideration in reviewing overall Administrative Confinement procedures. Mr. _____ is resistant to recommended treatment for anger management and highly aversive to working with staff. Dr. Wellage has recommended with Warden Peart's concurrence that Mr. _____ be transferred to Lincoln Correctional Centers Transition Confinement Program. It is hoped that we will be better able to assess and evaluate Mr. _____ mental status for determination of further programming be it mental health unit, general population or just simply working on his level of trust and cooperation with staff.

Discussion of these three inmates is believed instructive in guiding agency policy and practice for inmates on Administrative Confinement. The consensus opinion from Dr. Wellage and Social Work Director Kathy Foster are that *priority must be given in focusing resources on general population or Administrative Confinement inmates who are 1) mentally ill, 2) sex offenders or 3) violent offenders.* The limited resources available through clinical mental health staff and social workers underscore the legal mandate to treat these inmates with highest priority.

If no mental illness is present or diagnosed, then preparing an inmate anyway possible for parole is the next best alternative. This involves continuation of our efforts to fully implement the Transformation Project, Crisis Intervention and Conflict Management and Cognitive Restructuring (i.e. the 7 Habits of Highly Effective People) along with the levels program and building in additional privileges while reviewing the length of time an inmate spends on AC and the placement options for transitioning off of AC. Placement of such inmates on parole as appropriate will continue to provide opportunity for referring them to resources and direct services. This is not as effective after inmates have discharged as attitudinal and behavior problems leading to their placement remain counterproductive after release.

Recommended Policy and Practice Changes

As we have stated throughout evidenced-based case management and discharge planning should be employed. Readiness factors to consider for AC inmates might include:

- What behaviors caused them to come to segregation?
- History of behavior in prior segregation placements?
- How long have they been in segregation?
- How much time before release via parole or mandatory discharge?
- How are they behaving – misconduct reports?
- Overall citizenship on AC; how do they get along with staff and other inmates? Are they compliant?
- Threat posed upon return to GP; are they STG members who will have difficulty in GP?

1-867

- Program compliance; are they making a good faith effort in Transformation Project/Cognitive Restructuring?
- How are they doing with the levels program associated with stable behavior and graduated release? This might include showering without restraints, feeding assignments, eating in groups, opportunity for more movement, exercising in groups and participation in small groups for staff facilitated Transformation Project modules.

Inmates who are successfully engaged in these areas will likely present greater potential for moving to less restrictive environments. Current initiatives such as Conflict Resolution and Crisis Intervention along with the Transformation Project and 7 Habits of Highly Effective People being provided by non-clinical staff will go a long way toward prevention as a front end alternative to segregation and intervention after inmates are released from AC. Reentry to general population should be approached along the same lines as transition to Community Corrections (using the readiness index) or onto parole utilizing the parole risk factors. As an agency, if we are able to equip line staff with these tools for bringing about effective behavior we will go a long way toward approaching inmates on administrative confinement in a proactive versus reactive fashion.

12913

NEBRASKA DEPARTMENT OF CORRECTIONAL SERVICES
MENTAL HEALTH/MEDICAL REFERRAL FORM

REC'D
FEE

DATE: 1/31/13 REFERRAL SOURCE: Dr. Baker
INMATE NAME: Jenkins, Nikko NUMBER: 59478
INSTITUTION: TSCI LIVING LOCATION: SMU F-33

Instructions: The Referral source will retain the Pink Copy and send the White and Canary copies to the Referee. Once the Referee has completed the Disposition portion of the form, return the White copy to the Referral Source and file the Canary Copy.

REFERRAL TO (Check One):

- In-Patient Mental Health Program
- In-Patient Sex Offender Program
- Psychiatric Consult
- Medical
- Socially & Developmentally Impaired Program
- Crisis Intervention
- Mental Health Counseling/Assessment
- Other by another provider (NPM/MD)

COMMENTS:

Pt. is agitated, threatening behaviors - pt. reported to medical staff that he will be eating the hearts of women, men & children when he JAMS in 5 months - comments made on 1/13/13. On 1/10/13 - pt. self-inflicted wound below & above his eye requiring sutures. Pt. has been requesting emergency psychiatric therapy commitment "almost daily for the past 7-10 days. Pt. told nurse Specific Problem Identified: on 1/23/13 that he will drink his own semen for neuro-stimulants to increase his serotonin levels to ↑ his emotional state. Pt. is not sleeping much at night per custody staff as is frequently up exercising & has been exercising naked recently. He has also been Description of Symptoms Inmate is Exhibiting: refusing to have sutures removed - should have been removed 1/23-1/25/13. Pt. described by staff as loud, agitated, & FOI verbally threatening to others. Recent plan status 2° his behaviors.

Medical/Mental History (Include Current Medication(s)): Pt. cont. to refuse 4 topics. Pt. is h/o BAP. Pt. is a significant/serious risk to others - had a h/o violent/assaultive behaviors. Pt. also is a h/o strong cluster B/PMS traits. I am recommending for another provider (NPM or MD) to evaluate this pt. in the near future for further diagnostic clarification & tx options. Pt. currently appears mentally ill as well as an imminent danger to others. I also have scheduled pt. for a follow up visit within the next week. Possible civil commitment will be needed

Date of Screening Interview: 1/31/13 Interviewed By: N. Baker MD

Disposition: Seen on 2-1-13. Increases in anxiety and agitation noted. Feels he needs to be committed due to dangerousness to others. Very purposeful and coherent communication. Considering possible transfer to N&P due to need for additional observation needs prior to discharge. See clinical note in file. Date: 2-4-13 Initials: [Signature]

Original: Referee returns to Originator after Disposition
Canary: Referee after Written Response
Pink: Originator at the Time of Referral

Psych Note Jenkins, Nikko 2.4.13

CONFIDENTIALTECUMSEH STATE CORRECTIONAL INSTITUTE (TSCI)
PROGRESS NOTE

RECEIVED BY:

MAY 15 2014

JENKINS, NIKKO #59478

OMBUDSMAN'S OFFICE

FEBRUARY 4, 2013

SUBJECTIVE: Met with the patient today who reports continued difficulties with mental health issues, anger, and self-harm behaviors. He is currently on 15 minute checks as he broke a sprinkler head and is upset about not having his property. Patient reports he wants "orthopsychiatry" which he further elaborates is the "treatment of disorders of behavior and personality." Patient continues to ^{refuse} deny any psychotropic treatment at this facility. He reports he's been on limited property for the past 30 days with no mattress, which has made him angry. He complains of difficulty staying asleep. Appetite is good. He denies any difficulties with energy or concentration. He denies any suicidal or homicidal ideations, but patient did cut above and below his right eye on 1/18/2013 ^{which} that required ^{several} sutures. Patient has been scheduled 3 times with Medical to remove the sutures, but has refused to allow Medical to remove them. Patient denied that cutting his eye was a suicide attempt, but described it as a declaration to war as a "slither of war" as he reports he is a warrior with "spiritual declaration of warfare." He complains of difficulty with anger and feeling paranoid. He denies any physically aggressive behaviors, but does report he will harm people once he is released in 5 months. He has reported to Medical staff that he will "eat the hearts of women, men, and children." He has been verbally threatening the safety of others. He also continues to request "emergency psychiatric therapy and treatment" on a daily basis. On 1/23/2013, patient had told the SMU nurse that he will drink his own semen for neuro-stimulators to increase his serotonin levels and to decrease his emotional rage. Custody staff reports patient has not been sleeping as well at night and is frequently up exercising. Patient has also been observed by staff to be exercising naked recently. Again, patient continues to refuse to have his sutures removed and they should ^{not} have been removed ^{on} 1/23-1/25/2013. Staff report patient has been loud, agitated, ^{and} again verbally threatening to others. Patient has been on recent plan status due to these behaviors. He reports he is working out approximately 2 hours per day. Patient reports his mood has been up and down. He denies any difficulties with anxiety. He denies any panic symptoms. Does report, however, racing thoughts as well as obsessive thoughts. Patient reports he was exposed to repeated violent and traumatic experiences while growing up, which continue to cause him nightmares and flashbacks. Patient reports he was reading, but is unable to do so due to limited property status. Patient continues to report positive auditory hallucinations regarding "apophysis," and command hallucinations to "attack people." He denies any visual hallucinations. He feels he is "the alpha leader of apophysis" and further describes "night terrors" where he will sacrifice people and dreams of cannibalism. He does report good family support and he reports he plans to make his mother his power of attorney.

OBJECTIVE MENTAL STATUS EXAM: Patient's room is bare. There are no odors. Patient is dressed in his boxer shorts. It was observed he does have several sutures, both above and below his right eye, which are still in place. His skin is somewhat erythematous, but otherwise clean, dry, and intact. Patient's presentation/symptoms remain similar to previous evaluations. Patient is fairly cooperative, but becomes easily agitated and irritable. He maintains good, but rather intense, eye contact. Increased psychomotor agitation overall. Mood he describes as "psychosis state" for which he had difficulty elaborating. Affect intense, labile, easily agitated.

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Speech spontaneous. Remains rapid and loud at times. Patient is talkative and difficult to redirect at times. Patient may have some difficulties organizing his thoughts. He remains grandiose regarding his abilities/intelligence. He does exhibit flight of ideas. There are no looseness of associations. He does exhibit significant narcissism. Positive auditory and command hallucinations as described above. There are no visual hallucinations. He does remain paranoid/suspicious. Questionable delusions of grandiose type. He denies any suicidal or homicidal ideations at this time. He is alert and oriented. Attention, concentration, and cognition appear grossly intact. Reality testing, insight, and judgment remain impaired.

ASSESSMENT DIAGNOSIS:

Psychosis NOS
Possible Bipolar Affective Disorder NOS w/ Psychotic Features vs Delusional Disorder Grandiose Type vs Schizoaffective Disorder Bipolar Type vs Malingering
Probable PTSD
Patient with strong Antisocial and Narcissistic Traits
Relational Problem NOS
Polysubstance Dependence (Cannabis, "WET," Alcohol)
Adjustment D/O

PLAN: Patient complains of increased difficulty with anger, paranoia, continued auditory hallucinations, as well as command hallucinations to harm others, especially when he is released from corrections as he reports he jams in 5 months. Does appear he may be having difficulty sleeping, is more agitated/verbally threatening, per staff report. Patient does report PTSD symptoms related to his history of witnessing traumatic and violent situations. Patient does exhibit some manic/hypomanic behaviors including: ^{rapid} speech, possibly decreased sleep, flight of ideas, grandiosity, excessively driven behaviors, continued auditory and command hallucinations. Patient was requesting candy bars so he could increase his glucose. Also reports he doesn't want medications to affect his "neurons." Patient has not sent any kites to this provider since June of 2012. He denies any somatic complaints ^{at} this time and does follow with Medical for any physical concerns, but again has been refusing on 3 consecutive occasions to have his sutures removed. Patient does exhibit significant narcissistic/antisocial traits and behaviors. Patient with manipulative and possible malingering behaviors for secondary gain as he continues to want to be transferred to LRC/LCC. Patient, again, reports PTSD symptoms related to his history of physical/sexual abuse, and violence with continued nightmares and flashbacks. Patient has received psychiatric testing and assessment which did not find a definitive major mental illness or Axis I diagnosis besides his history of Polysubstance Dependence. Testing did reveal significant Axis II issues including strong antisocial and narcissistic traits. However, patient does have a history of Bipolar Affective Disorder as well as a significant history of violence and assaultive behaviors. This provider is concerned regarding the patient being released from this facility ^{directly} into the community as he is directly threatening to harm others ^{when} he is released. He also has had ^{recent} self-harm behaviors and is not allowing Medical to remove the sutures. Again, staff has also ^{reported} that the patient does not appear to be sleeping as well at night and is excessively exercising. Also has appeared more agitated ^{again} with continued flight of ideas, grandiosity, verbally threatening, recent pian status. This provider has completed a formal mental health referral due to feeling that the patient poses significant/serious risks to others and again, has a history of violent/assaultive behaviors. Patient also with a history of strong Cluster B and Antisocial Traits. This provider is recommending for another provider, either a nurse

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practitioner or psychiatrist to evaluate this patient in the near future for further diagnostic clarification and treatment options. Patient currently appears mentally ill as well as an imminent danger to others. Patient will possibly require civil commitment prior to being released to ensure his safety as well as the safety of others. This provider has also discussed the above concerns with Dr. Wellage who is also planning to see the patient soon and determine further treatment and housing options. Patient denies any significant symptoms of depression or anxiety. He continues to refuse all psychotropics. He has a history of noncompliance with psychotropics and it appears his symptoms have also been somewhat refractory to treatment in the past. Patient refuses both antipsychotics, mood stabilizers, as well as sleep aids. Patient with possible OCD symptoms, including compulsive working out and cleaning. Some of patient's symptoms also are likely due to significant behavioral and Axis II issues. There are no Dissociative Identity Disorder symptoms reported or observed. Did discuss sleep hygiene, coping skills, anger issues and appropriate boundaries, grief and loss issues, trauma issues, reality testing, as well as treatment options with the patient. Did discuss risks, benefits, and alternative treatments with the patient. Patient is not taking any psychotropics due to patient refusal. Patient does appear to be meeting his overall basic needs, however, again, is refusing to allow Medical to remove his sutures as well as refuses to work with Mental Health staff. Did encourage the patient to cooperate with staff. Will continue to monitor the patient and adjust medications as necessary. He will be scheduled to follow up with the psychiatrist in approximately 4-6 weeks, sooner if needed.



Natalie Baker, M.D.
Consulting Psychiatrist

NB/mws
2/4/13

12913

NEBRASKA DEPARTMENT OF CORRECTIONAL SERVICES
MENTAL HEALTH/MEDICAL REFERRAL FORM

FEE \$ 1.2500
FEE

DATE: 1/31/13 REFERRAL SOURCE: Dr. Baker

INMATE NAME: Jenkins, Nikko NUMBER: 59478

INSTITUTION: TSCI LIVING LOCATION: SMU F-33

Instructions: The Referral source will retain the Pink Copy and send the White and Canary copies to the Referee. Once the Referee has completed the Disposition portion of the form, return the White copy to the Referral Source and file the Canary Copy.

REFERRAL TO (Check One):

- In-Patient Mental Health Program
- In-Patient Sex Offender Program
- Psychiatric Consult
- Medical

- Socially & Developmentally Impaired Program
- Crisis Intervention
- Mental Health Counseling/Assessment
- Other by another provider (NPM/MD)

COMMENTS:

Pt. is agitated, threatening behaviors - pt. reported to medical staff that he will be eating the hearts of women, men & children when he JAMS in 5 months - comments made on 1/13/13. On 1/10/13 - pt. self-inflicted wound below & above his eye requiring sutures. Pt. has been requesting "emergency psychiatric therapy and treatment" almost daily for the past 7-10 days. Pt. told nurse Specific Problem Identified: on 1/23/13 that he will drink his own semen for neuro-stimulants to increase his serotonin levels to his emotional pain. Pt. is not sleeping much at night per custody staff as is frequently up exercising & has been exercising naked recently. Pt. has also been Description of Symptoms Inmate is Exhibiting: refusing to have sutures removed - should have been removed 1/23-1/25/13. Pt. described by staff as loud, agitated, FOI verbally threatening to others. Recent plan status 2° his behaviors.

Medical/Mental History (Include Current Medication(s)): Pt. cont. to refuse psychotropics. Pt. is h/o BAP. Pt. is a significant/sizable risk to others & had a h/o violent/assaultive behaviors. Pt. also is a h/o strong cluster B/MS traits & am recommending for another provider (NPM/MD) to evaluate this pt. in the near future for further diagnostic clarification & tx options. Pt. currently appears mentally ill as well as an imminent danger to others. I also have scheduled pt. for a follow up visit within the next week. Possible civil commitment will be needed

Date of Screening Interview: 1/31/13 Interviewed By: N. Baker MD

Disposition: Seen on 2-1-13. Increases in anxiety and agitation noted. Feels he needs to be committed due to dangerousness to others. Very purposeful and coherent communication. Considering possible transfer to NBP due to need for additional observation needs prior to discharge. See clinical note in file. Date: 2-4-13 Initials: [Signature]

Psych Note Jenkins, Nilcko 2.4.13

CONFIDENTIALTECUMSEH STATE CORRECTIONAL INSTITUTE (TSCI)
PROGRESS NOTE

RECEIVED BY:

MAY 15 2014

JENKINS, NIKKO #59478

OMBUDSMAN'S OFFICE

FEBRUARY 4, 2013

SUBJECTIVE: Met with the patient today who reports continued difficulties with mental health issues, anger, and self-harm behaviors. He is currently on 15 minute checks as he broke a sprinkler head and is upset about not having his property. Patient reports he wants "orthopsychiatry" which he further elaborates is the "treatment of disorders of behavior and personality." Patient continues to ^{refuse} deny any psychotropic treatment at this facility. He reports he's been on limited property for the past 30 days with no mattress, which has made him angry. He complains of difficulty staying asleep. Appetite is good. He denies any difficulties with energy or concentration. He denies any suicidal or homicidal ideations, but patient did cut above and below his right eye on 1/18/2013 ^{which} required ^{several} sutures. Patient has been scheduled 3 times with Medical to remove the sutures, but has refused to allow Medical to remove them. Patient denied that cutting his eye was a suicide attempt, but described it as a declaration to war as a "slither of war" as he reports he is a warrior with "spiritual declaration of warfare." He complains of difficulty with anger and feeling paranoid. He denies any physically aggressive behaviors, but does report he will harm people once he is released in 5 months. He has reported to Medical staff that he will "eat the hearts of women, men, and children." He has been verbally threatening the safety of others. He also continues to request "emergency psychiatric therapy and treatment" on a daily basis. On 1/23/2013, patient had told the SMU nurse that he will drink his own semen for neuro-stimulators to increase his serotonin levels and to decrease his emotional rage. Custody staff reports patient has not been sleeping as well at night and is frequently up exercising. Patient has also been observed by staff to be exercising naked recently. Again, patient continues to refuse to have his sutures removed and they should ^{and} have been removed ^{on} 1/23-1/25/2013. Staff report patient has been loud, agitated, ^{and} verbally threatening to others. Patient has been on recent plan status due to these behaviors. He reports he is working out approximately 2 hours per day. Patient reports his mood has been up and down. He denies any difficulties with anxiety. He denies any panic symptoms. Does report, however, racing thoughts as well as obsessive thoughts. Patient reports he was exposed to repeated violent and traumatic experiences while growing up, which continue to cause him nightmares and flashbacks. Patient reports he was reading, but is unable to do so due to limited property status. Patient continues to report positive auditory hallucinations regarding "apophysis," and command hallucinations to "attack people." He denies any visual hallucinations. He feels he is "the alpha leader of apophysis" and further describes "night terrors" where he will sacrifice people and dreams of cannibalism. He does report good family support and he reports he plans to make his mother his power of attorney.

OBJECTIVE MENTAL STATUS EXAM: Patient's room is bare. There are no odors. Patient is dressed in his boxer shorts. It was observed he does have several sutures, both above and below his right eye, which are still in place. His skin is somewhat erythematous, but otherwise clean, dry, and intact. Patient's presentation/symptoms remain similar to previous evaluations. Patient is fairly cooperative, but becomes easily agitated and irritable. He maintains good, but rather intense, eye contact. Increased psychomotor agitation overall. Mood he describes as "psychosis state" for which he had difficulty elaborating. Affect intense, labile, easily agitated.

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Speech spontaneous. Remains rapid and loud at times. Patient is talkative and difficult to redirect at times. Patient may have some difficulties organizing his thoughts. He remains grandiose regarding his abilities/intelligence. He does exhibit flight of ideas. There are no looseness of associations. He does exhibit significant narcissism. Positive auditory and command hallucinations as described above. There are no visual hallucinations. He does remain paranoid/suspicious. Questionable delusions of grandiose type. He denies any suicidal or homicidal ideations at this time. He is alert and oriented. Attention, concentration, and cognition appear grossly intact. Reality testing, insight, and judgment remain impaired.

ASSESSMENT DIAGNOSIS:

- Psychosis NOS
- Possible Bipolar Affective Disorder NOS w/ Psychotic Features vs Delusional Disorder Grandiose Type vs Schizoaffective Disorder Bipolar Type vs Malingering
- Probable PTSD
- Patient with strong Antisocial and Narcissistic Traits
- Relational Problem NOS
- Polysubstance Dependence (Cannabis, "WET," Alcohol)
- Adjustment: D/O

PLAN: Patient complains of increased difficulty with anger, paranoia, continued auditory hallucinations, as well as command hallucinations to harm others, especially when he is released from corrections as he reports he jams in 5 months. Does appear he may be having difficulty sleeping, is more agitated, verbally threatening, per staff report. Patient does report PTSD symptoms related to his history of witnessing traumatic and violent situations. Patient does exhibit some manic/hypomanic behaviors including: ^{rapid} speech, possibly decreased sleep, flight of ideas, grandiosity, ~~excessively~~ driven behaviors, continued auditory and command hallucinations. Patient was requesting candy bars so he could increase his glucose. Also reports he doesn't want medications to affect his "neurons." Patient has not sent any kites to this provider since June of 2012. He denies any somatic complaints ^{at} this time and does follow with Medical for any physical concerns; but again has been refusing on 3 consecutive occasions to have his sutures removed. Patient does exhibit significant narcissistic/antisocial traits and behaviors. Patient with manipulative and possible malingering behaviors for secondary gain as he continues to want to be transferred to LRC/LCC. Patient, again, reports PTSD symptoms related to his history of physical/sexual abuse, and violence with continued nightmares and flashbacks. Patient has received psychiatric testing and assessment which did not find a definitive major mental illness or Axis I diagnosis besides his history of Polysubstance Dependence. Testing did reveal significant Axis II issues including strong antisocial and narcissistic traits. However, patient does have a history of Bipolar Affective Disorder as well as a significant history of violence and assaultive behaviors. This provider is concerned regarding the patient being released from this facility ^{direct} from segregation into the community as he is directly threatening to harm others ^{when} he is released. He also has had ^{recent} self-harm behaviors and is not allowing Medical to remove the sutures. Again, staff has also ^{been} reported ^{that the} patient does not appear to be sleeping as well at night and is excessively exercising. ^{He} Also has appeared more agitated ^{again} with continued flight of ideas, grandiosity, verbally threatening, recent plan status. This provider has completed a formal mental health referral due to feeling that the patient poses significant/serious risks to others and again, has a history of violent/assaultive behaviors. Patient also with a history of strong Cluster B and Antisocial Traits. This provider is recommending for another provider, either a nurse



CONFIDENTIAL

practitioner or psychiatrist to evaluate this patient in the near future for further diagnostic clarification and treatment options. Patient currently appears mentally ill as well as an imminent danger to others. Patient will possibly require civil commitment prior to being released to ensure his safety as well as the safety of others. This provider has also discussed the above concerns with Dr. Weilage who is also planning to see the patient soon and determine further treatment and housing options. Patient denies any significant symptoms of depression or anxiety. He continues to refuse all psychotropics. He has a history of noncompliance with psychotropics and it appears his symptoms have also been somewhat refractory to treatment in the past. Patient refuses ^{to take} both antipsychotics, mood stabilizers, as well as ^{any} sleep aids. Patient with possible OCD symptoms, including compulsive working out and cleaning. Some of patient's symptoms also are likely due to significant behavioral and Axis II issues. There are no Dissociative Identity Disorder symptoms reported or observed. Did discuss sleep hygiene, coping skills, anger issues and appropriate boundaries, grief and loss issues, trauma issues, reality testing, as well as treatment options with the patient. Did discuss risks, benefits, and alternative treatments with the patient. Patient is not taking any psychotropics due to patient refusal. Patient does appear to be meeting his overall basic needs, however, again, is refusing to allow Medical to remove his sutures as well as refuses to work with Mental Health staff. Did encourage the patient to cooperate with staff. Will continue to monitor the patient and adjust medications as necessary. He will be scheduled to follow up with the psychiatrist in approximately 4-6 weeks, sooner if needed.

N. Baker

Natalie Baker, M.D.
Consulting Psychiatrist

NB/mws
2/4/13

1-617

JENKINS NIKKO A #59478
2012-3250NEBRASKA DEPARTMENT OF CORRECTIONAL SERVICES
GRIEVANCE FORM
Step Two
Central Office Appeal
RESPONSE AND REASONS FOR DECISION REACHED

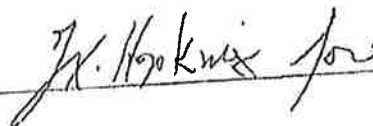
Inmate Name: JENKINS NIKKO A
 Inmate Number: 59478
 Date Received: 5/2/2012
 Grievance Number: 2012-3250
 Subject: Returned - Did not follow procedure.
 Response:

You submitted this as a grievance of a sensitive nature. In it you contend that being on administrative confinement is rapidly deteriorating you mentally and that you are not receiving appropriate mental health treatment. You ask to be transferred to another facility. Assignment to a particular institution and in a specific classification are not issues that will be addressed in response to a grievance because these are determined by the classification process that includes the right to appeal. Further, these are not issues of a sensitive nature. Therefore, this grievance is being returned unanswered.

Date

5-9-12

Director



1042
1-612
Please Help me

Confidential Confidential 1042
NEBRASKA DEPARTMENT OF CORRECTIONAL SERVICES
INFORMAL GRIEVANCE RESOLUTION FORM
UNIT STAFF 12-3250

FROM: Jenkins A Nikko 59478 TSCI SMU 9
Last Name, First, Middle Initial Number Facility/Housing Unit

PART A: Inmate Request/Concern.

Dear MR Robert Houston Director of Department of Correctional Services
I NIKKO Jenkins Am writing this Confidential grievance in regard
to my emergency need of medical treatment psychologically In my
Current Confinement of AC 23 Hour A day lockdown I continue to be
rapidly deteriorating mentally Here In Tecumseh State Correctional
Institution the mental Health department has very unprofessionally
Handled my case I am not recieving psychotherapy sessions AS
you Sir are well aware NDCS mental Health Dr whilage Has completed
An Evaluation of my mental disorders yet I am still not being
Treated In This Facility
Date: April 28 2012 Signature: Nikko Jenkins #59478

PART B: Response and Reason(s) for Decision Reached.

5-9-12 See attached response. J. Hopkins
Date Signature

NOTE: A copy of this completed Informal Grievance Resolution Form must accompany any Step 1 Institutional Grievance Form.

PART C: Receipt.

RETURN TO: Jenkins, Nikko A. 59478 TSCI
Last Name, First, Middle Initial Number Facility/Housing Unit

I acknowledge receipt this date of a complaint from the above Inmate in regard to the following subject:

Medical/mental health 12-3250
5/2/12 Orsley Alloway
Date Signature of Unit Staff Receiving Complaint

Latik
please
help me

Confidential
NEBRASKA DEPARTMENT OF CORRECTIONAL SERVICES
INFORMAL GRIEVANCE RESOLUTION FORM
UNIT STAFF

12-2-2019

FROM: Jenkins A NIKKO 59478 TSCI SMU F39
Last Name, First, Middle Initial Number Facility/Housing Unit

PART A: Inmate Request/Concern.

MR Houston Sir As I was Held In douglas county Their psychologist
Evaluated me Sir And Their findings were very serious And In Their
Professional opinion's Their recommendations To my district court
Judge Gary B Randell was I NIKKO Jenkins suffer from severe
psychological disability of mental illness Sir I refer you to the
sentencing Final order rendered upon I NIKKO Jenkins July 11th 2011
Judge Gary B Randell States MR Jenkins Has A long And serious history
of mental illness And needs to be treated And Assessed I wish to be
moved from this facility As I can not Rehabilitate Here Ima not under
medication nor Any treatment
Date April 26th 2012 Signature Nikko Jenkins 59478

I wish to recieve medical treatment At LCC mental health mod for mental illness

PART B: Response and Reason(s) for Decision Reached.

[Empty box for response and reason(s) for decision reached]

NOTE: A copy of this completed Informal Grievance Resolution Form must accompany any Step 1 Institutional Grievance Form.

PART C: Receipt.

RETURN TO: Jenkins, Nikko A 59478 TSCI
Last Name, First, Middle Initial Number Facility/Housing Unit

I acknowledge receipt this date of a complaint from the above inmate in regard to the following subject:

Medical/mental health 12-2-2019
4/27/12 [Signature]
Date Signature of Unit Staff Receiving Complaint

1-617

JENKINS NIKKO A #59478
2012-3250NEBRASKA DEPARTMENT OF CORRECTIONAL SERVICES
GRIEVANCE FORM
Step Two
Central Office Appeal
RESPONSE AND REASONS FOR DECISION REACHED

Inmate Name: JENKINS NIKKO A
Inmate Number: 59478
Date Received: 5/2/2012
Grievance Number: 2012-3250
Subject: Returned - Did not follow procedure.
Response:

You submitted this as a grievance of a sensitive nature. In It you contend that being on administrative confinement is rapidly deteriorating you mentally and that you are not receiving appropriate mental health treatment. You ask to be transferred to another facility. Assignment to a particular institution and in a specific classification are not issues that will be addressed in response to a grievance because these are determined by the classification process that includes the right to appeal. Further, these are not issues of a sensitive nature. Therefore, this grievance is being returned unanswered.

5-9-12
Date Director 

1 of 2
1-61
Please Help me

Confidential Confidential
NEBRASKA DEPARTMENT OF CORRECTIONAL SERVICES
INFORMAL GRIEVANCE RESOLUTION FORM
UNIT STAFF 12-3250

FROM: Jenkins A Nikko 59478 TSCI SMU
Last Name, First, Middle Initial Number Facility/Housing Unit

PART A: Inmate Request/Concern.

Dear MR Robert Houston Director of Department of Correctional Services
I NIKKO Jenkins Am writing this Confidential grievance in regard
to my emergency need of medical treatment psychologically In my
Current Confinement of AC 23 Hour A day lockdown I continue to be
rapidly deteriorating mentally Here In Tecumseh State Correctional
Institution the mental Health department has very unprofessionally
Handled my case I am not receiving psychotherapy sessions AS
you sir are well aware NDCS mental Health Dr whilage has complete
An evaluation of my mental disorders yet I am still not being
Treated In This Facility.
Date April 28th 2012 Signature Nikko Jenkins #59478

PART B: Response and Reason(s) for Decision Reached.

5-9-12 See attached response. J.K. Hopkins
Date Signature

NOTE: A copy of this completed Informal Grievance Resolution Form must accompany any Step 1 Institutional Grievance Form.

PART C: Receipt.

RETURN TO: Jenkins, Nikko A. 59478 TSCI
Last Name, First, Middle Initial Number Facility/Housing Unit

I acknowledge receipt this date of a complaint from the above inmate in regard to the following subject:

Medical/mental health 12-3250
5/2/12 Ashley Alloway
Date Signature of Unit Staff Receiving Complaint

Confidential
NEBRASKA DEPARTMENT OF CORRECTIONAL SERVICES
INFORMAL GRIEVANCE RESOLUTION FORM
UNIT STAFF
Please see help me
12-3-09
619

FROM: Jenkins A NIKKO 59478 TSCI SMU F39
Last Name, First, Middle Initial Number Facility/Housing Unit

PART A: Inmate Request/Concern.
MR Houston Sir As I was Held In douglas county Their psychologist
Evaluated me Sir And Their findings were very serious And In Their
Professional opinion's Their recommendations To my district court
Judge Gary B Randell was I NIKKO Jenkins Suffer from Severe
psychological disability of mental illness Sir I refer you to The
Sentencing Final order rendered upon I NIKKO Jenkins July 11th 2011
Judge Gary B Randell States MR Jenkins Has A long And Serious History
of mental illness And needs to be treated And Assessed I wish to be
moved from This Facility As I can not Rehabilitate Here I am not under
Date April 26th 2013 medication nor any treatment. Signature Nikko Jenkins 59478

I wish to recieve medical treatment At LCC mental health mod for mental illne

PART B: Response and Reason(s) for Decision Reached.

Date _____ Signature _____

NOTE: A copy of this completed Informal Grievance Resolution Form must accompany any Step 1 Institutional Grievance Form.

PART C: Receipt.
RETURN TO: Jenkins, Nikko A 59478 TSCI
Last Name, First, Middle Initial Number Facility/Housing Unit

I acknowledge receipt this date of a complaint from the above inmate in regard to the following subject:
Medical/Mental Health
7/1/13
[Signature]
Date Signature of Unit Staff/Receiving Complaint

1-623

JENKINS NIKKO A #59478
2013-1380NEBRASKA DEPARTMENT OF CORRECTIONAL SERVICES
GRIEVANCE FORM
Step Two
Central Office Appeal
RESPONSE AND REASONS FOR DECISION REACHED

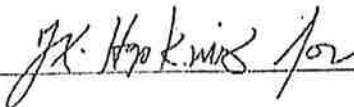
Inmate Name: JENKINS NIKKO A
Inmate Number: 59478
Date Received: 2/15/2013
Grievance Number: 2013-1380
Subject: Returned - Did not follow procedure.
Response:

You submitted this as an emergency grievance. Emergency grievances should be submitted to unit staff so you can receive a prompt response if an emergency exists. You are asking to be released from the special management unit for psychiatric treatment. This is a classification issue that will not be addressed in response to a grievance. Therefore, this grievance is being returned unanswered.

Date

3-8-13

Director



EMERGENCY PLEASE HELP ME! EMERGENCY PLEASE HELP ME!

1-624
Robert P Houston
Director (WDCS)

NEBRASKA DEPARTMENT OF CORRECTIONAL SERVICES
INFORMAL GRIEVANCE RESOLUTION FORM
UNIT STAFF

Robert P Houston
Director (WDCS) 2013 138

FROM: JENKINS A NIKKO
Last Name, First, Middle Initial

59478
Number

TSCI SMU
Facility/Housing Unit

PART A: Inmate Request/Concern. #

MIR Houston Sir I Nikko Allen Jenkins 59478 Am requesting under
Nebraskas mental Health Act chapter 71 Article 9 (NE) Status of
1-902 # 1-908 # 1-910 In Emergency protective custody Removing
me from TSCI SMU unit for psychiatric treatment As I classify
As dangerous persons of mentally ill For severe psychosis States
of my mental illness of Schizophrenia I Am ordered By Great Spirit
Athaphis to eat Human Beings Assassinate christian and catholic
In waging WARFARE of Revelations onto the Earth Im Requesting
February 13-14 2013 Emergency Hospitalization
Date Signature

PLEASE Sir HELP me I do not wish to carry out these orders of the WAR FIED

PART B: Response and Reason(s) for Decision Reached.

3-8-13 See attached response
Date

[Signature]
Signature

NOTE: A copy of this completed Informal Grievance Resolution Form must accompany any Stop 1 Institutional Grievance Form.

PART C: Receipt.

RETURN TO: Jenkins Nikko 59478 TSCI
Last Name, First, Middle Initial Number Facility/Housing Unit

I acknowledge receipt this date of a complaint from the above inmate in regard to the following subject:

2013-1380

2-15-13
Date

[Signature]
Signature of Unit Staff Receiving Complaint

1-835

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Alloys
Minerals
Cyanide

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mentally ill health board of (12) NEBRASKA DEPARTMENT OF CORRECTIONAL SERVICES

INMATE INTERVIEW REQUEST

TO: Fred Myer, Warden TOCI DATE: February 4, 2012
FROM: Nikko Jenkins TOCI 1570mu LOCATION

WORK LOCATION: UNIT STAFF: # 59478

MESSAGE: Psychosis State of Schizophrenia Documented By NIKKO JENKINS

Handwritten message body text, including the name 'Nikko Jenkins' and a signature.

ORIGINAL - DCS Employee
YELLOW - Inmate
Both copies need to be submitted for response.

REPLY:

Mr. Jenkins, you are capable of writing IIR's
IIR's like this will be returned to you unanswered.

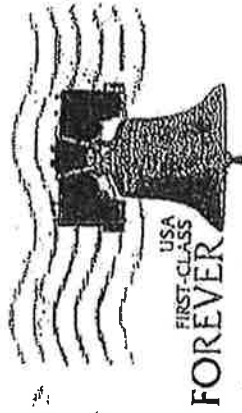
2/5/2012 Date Signature

1-627

Notice: this correspondence was mailed from an institution operated by the Nebraska Department of Corrections. Its contents are unclassified.
Inmate Name: Walter Jenkins
Inmate # 51116
PO Box 900
Tecumseh, NE 68450-0900

OMAHA, NE 681

14 FEB 2013 PM 4 T



(012 Privileged mail)

Department of Correctional Services

Robert P. Houston Director

PoBox 946661 Central Office

LINCOLN, NE 68509-4661

Privileged mail of legal documents mailed on February 13th 2013
(-012 Privileged mail)

Privileged mail of legal documents mailed on February 13th 2013
(012 Privileged mail)

1-628

Emergency Health Treatment Please Help

of Stann. (M) + (N) (G) (H) (I) (J) (K) (L) (M) (N) (O) (P) (Q) (R) (S) (T) (U) (V) (W) (X) (Y) (Z) (AA) (AB) (AC) (AD) (AE) (AF) (AG) (AH) (AI) (AJ) (AK) (AL) (AM) (AN) (AO) (AP) (AQ) (AR) (AS) (AT) (AU) (AV) (AW) (AX) (AY) (AZ) (BA) (BB) (BC) (BD) (BE) (BF) (BG) (BH) (BI) (BJ) (BK) (BL) (BM) (BN) (BO) (BP) (BQ) (BR) (BS) (BT) (BU) (BV) (BW) (BX) (BY) (BZ) (CA) (CB) (CC) (CD) (CE) (CF) (CG) (CH) (CI) (CJ) (CK) (CL) (CM) (CN) (CO) (CP) (CQ) (CR) (CS) (CT) (CU) (CV) (CW) (CX) (CY) (CZ) (DA) (DB) (DC) (DD) (DE) (DF) (DG) (DH) (DI) (DJ) (DK) (DL) (DM) (DN) (DO) (DP) (DQ) (DR) (DS) (DT) (DU) (DV) (DW) (DX) (DY) (DZ) (EA) (EB) (EC) (ED) (EE) (EF) (EG) (EH) (EI) (EJ) (EK) (EL) (EM) (EN) (EO) (EP) (EQ) (ER) (ES) (ET) (EU) (EV) (EW) (EX) (EY) (EZ) (FA) (FB) (FC) (FD) (FE) (FF) (FG) (FH) (FI) (FJ) (FK) (FL) (FM) (FN) (FO) (FP) (FQ) (FR) (FS) (FT) (FU) (FV) (FW) (FX) (FY) (FZ) (GA) (GB) (GC) (GD) (GE) (GF) (GG) (GH) (GI) (GJ) (GK) (GL) (GM) (GN) (GO) (GP) (GQ) (GR) (GS) (GT) (GU) (GV) (GW) (GX) (GY) (GZ) (HA) (HB) (HC) (HD) (HE) (HF) (HG) (HH) (HI) (HJ) (HK) (HL) (HM) (HN) (HO) (HP) (HQ) (HR) (HS) (HT) (HU) (HV) (HW) (HX) (HY) (HZ) (IA) (IB) (IC) (ID) (IE) (IF) (IG) (IH) (II) (IJ) (IK) (IL) (IM) (IN) (IO) (IP) (IQ) (IR) (IS) (IT) (IU) (IV) (IW) (IX) (IY) (IZ) (JA) (JB) (JC) (JD) (JE) (JF) (JG) (JH) (JI) (JJ) (JK) (JL) (JM) (JN) (JO) (JP) (JQ) (JR) (JS) (JT) (JU) (JV) (JW) (JX) (JY) (JZ) (KA) (KB) (KC) (KD) (KE) (KF) (KG) (KH) (KI) (KJ) (KL) (KM) (KN) (KO) (KP) (KQ) (KR) (KS) (KT) (KU) (KV) (KW) (KX) (KY) (KZ) (LA) (LB) (LC) (LD) (LE) (LF) (LG) (LH) (LI) (LJ) (LK) (LM) (LN) (LO) (LP) (LQ) (LR) (LS) (LT) (LU) (LV) (LW) (LX) (LY) (LZ) (MA) (MB) (MC) (MD) (ME) (MF) (MG) (MH) (MI) (MJ) (MK) (ML) (MN) (MO) (MP) (MQ) (MR) (MS) (MT) (MU) (MV) (MW) (MX) (MY) (MZ) (NA) (NB) (NC) (ND) (NE) (NF) (NG) (NH) (NI) (NJ) (NK) (NL) (NO) (NP) (NQ) (NR) (NS) (NT) (NU) (NV) (NW) (NX) (NY) (NZ) (OA) (OB) (OC) (OD) (OE) (OF) (OG) (OH) (OI) (OJ) (OK) (OL) (OM) (ON) (OO) (OP) (OQ) (OR) (OS) (OT) (OU) (OV) (OW) (OX) (OY) (OZ) (PA) (PB) (PC) (PD) (PE) (PF) (PG) (PH) (PI) (PJ) (PK) (PL) (PM) (PN) (PO) (PP) (PQ) (PR) (PS) (PT) (PU) (PV) (PW) (PX) (PY) (PZ) (QA) (QB) (QC) (QD) (QE) (QF) (QG) (QH) (QI) (QJ) (QK) (QL) (QM) (QN) (QO) (QP) (QQ) (QR) (QS) (QT) (QU) (QV) (QW) (QX) (QY) (QZ) (RA) (RB) (RC) (RD) (RE) (RF) (RG) (RH) (RI) (RJ) (RK) (RL) (RM) (RN) (RO) (RP) (RQ) (RR) (RS) (RT) (RU) (RV) (RW) (RX) (RY) (RZ) (SA) (SB) (SC) (SD) (SE) (SF) (SG) (SH) (SI) (SJ) (SK) (SL) (SM) (SN) (SO) (SP) (SQ) (SR) (SS) (ST) (SU) (SV) (SW) (SX) (SY) (SZ) (TA) (TB) (TC) (TD) (TE) (TF) (TG) (TH) (TI) (TJ) (TK) (TL) (TM) (TN) (TO) (TP) (TQ) (TR) (TS) (TT) (TU) (TV) (TW) (TX) (TY) (TZ) (UA) (UB) (UC) (UD) (UE) (UF) (UG) (UH) (UI) (UJ) (UK) (UL) (UM) (UN) (UO) (UP) (UQ) (UR) (US) (UT) (UU) (UV) (UW) (UX) (UY) (UZ) (VA) (VB) (VC) (VD) (VE) (VF) (VG) (VH) (VI) (VJ) (VK) (VL) (VM) (VN) (VO) (VP) (VQ) (VR) (VS) (VT) (VU) (VV) (VW) (VX) (VY) (VZ) (WA) (WB) (WC) (WD) (WE) (WF) (WG) (WH) (WI) (WJ) (WK) (WL) (WM) (WN) (WO) (WP) (WQ) (WR) (WS) (WT) (WU) (WV) (WW) (WX) (WY) (WZ) (XA) (XB) (XC) (XD) (XE) (XF) (XG) (XH) (XI) (XJ) (XK) (XL) (XM) (XN) (XO) (XP) (XQ) (XR) (XS) (XT) (XU) (XV) (XW) (XX) (XY) (XZ) (YA) (YB) (YC) (YD) (YE) (YF) (YG) (YH) (YI) (YJ) (YK) (YL) (YM) (YN) (YO) (YP) (YQ) (YR) (YS) (YT) (YU) (YV) (YW) (YX) (YY) (YZ) (ZA) (ZB) (ZC) (ZD) (ZE) (ZF) (ZG) (ZH) (ZI) (ZJ) (ZK) (ZL) (ZM) (ZN) (ZO) (ZP) (ZQ) (ZR) (ZS) (ZT) (ZU) (ZV) (ZW) (ZX) (ZY) (ZZ)

1-623

JENKINS NIKKO A #59478
2013-1380NEBRASKA DEPARTMENT OF CORRECTIONAL SERVICES
GRIEVANCE FORM
Step Two
Central Office Appeal
RESPONSE AND REASONS FOR DECISION REACHED

Inmate Name: JENKINS NIKKO A
Inmate Number: 59478
Date Received: 2/15/2013
Grievance Number: 2013-1380
Subject: Returned - Did not follow procedure.
Response:

You submitted this as an emergency grievance. Emergency grievances should be submitted to unit staff so you can receive a prompt response if an emergency exists. You are asking to be released from the special management unit for psychiatric treatment. This is a classification issue that will not be addressed in response to a grievance. Therefore, this grievance is being returned unanswered.

Date

3-8-13

Director



EMERGENCY PLEASE HELP ME! EMERGENCY PLEASE HELP ME!
 1-624
 Robert P Houston 2013 138
 Director (WDCS)
 NEBRASKA DEPARTMENT OF CORRECTIONAL SERVICES
 INFORMAL GRIEVANCE RESOLUTION FORM
 UNIT STAFF
 Director (WDCS)
 FROM: JENKINS ANIKKO 59478 # TSCI SMU
 Last Name, First, Middle Initial Number Facility/Housing Unit

PART A: Inmate Request/Concern. #
 MR Houston Sir I Nikko Allen Jenkins 59478 Am Requesting under
 Nebraskas mental Health Act chapter 71 Article 9 (NE) Status of
 # 11-902 # 11-908 # 11-920 In Emergency protective custody Removing
 me from TSCI SMU unit for psychiatric treatment As I classify
 As dangerous persons of mentally ill For Severe psychosis States
 of my mental illness of Schizophrenia I Am ordered By Great Serpent
 Anpaphis to eat Human Beings Assassinate christianist catholic
 In Waging WARFARE of Revelations onto the Earth I'm Requesting
 February 13th 2013 Emergency Hospitalization
 Date Signature
 PLEASE Sir HELP me I do not wish to carry out these orders of the WAR FLD

PART B: Response and Reason(s) for Decision Reached.
 3-8-13 See attached response
 Date Signature

NOTE: A copy of this completed Informal Grievance Resolution Form must accompany any Step 1 Institutional Guidance Form.

PART C: Receipt.
 RETURN TO: Jenkins Anikko 59478 TSCI
 Last Name, First, Middle Initial Number Facility/Housing Unit

I acknowledge receipt this date of a complaint from the above inmate in regard to the following subject: 2013-1380
 Date 2-15-13
 Signature of Unit Staff Receiving Complaint

mentally ill board of (16) Nebraska Department of Correctional Services (71-902) (71-908) (71-915) & number 1-626

NEBRASKA DEPARTMENT OF CORRECTIONAL SERVICES

mentally ill board of (16) INMATE INTERVIEW REQUEST mentally ill board of (16)

TO: Fred Miller, Warden TOCI DATE: February 4th 2012
FROM: Nikko Jenkins TOCI 1570mu LOCATION

WORK LOCATION: UNIT STAFF: # 59478

MESSAGE: Psychosis State of Schizophrenia Documented By NIKKO JENKINS

Vertical text on the left side of the message area, possibly a date stamp or routing information.

Nikko Jenkins
Signature

ORIGINAL - DCS Employee
YELLOW - Inmate
Both copies need to be submitted for response.

REPLY: Mr. Jenkins, you are capable of writing IIR's. IIR's like this will be returned to you unanswered.

2/5/2012
Date

Signature

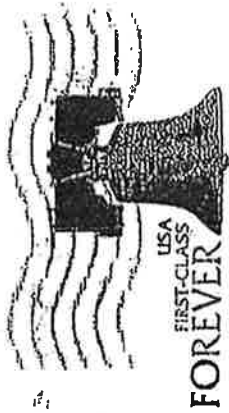
1-627

Notice: this correspondence was mailed from an institution operated by the Nebraska Department of Corrections. Its contents are unclassified.

Inmate Name: ALVIN G. JOHNSON
Inmate # 111111
PO Box 510 51111
Tecumseh, NE 68450-0500

OMAHA, NE 68111

14 FEB 2013 PM 4 1



(012 Privileged Mail)

Department of Correctional Services

Robert P. Houston Director

PoBox 946661 Central Office

Lincoln, NE 68509-4661

Privileged mail of legal documents mailed on February 13th 2013 (012 Privileged mail)

Privileged mail of legal documents mailed on February 13th 2013 (012 privileged mail)

1-892

Lindgren, Sharon

From: Busboom, Scott
Sent: Friday, March 08, 2013 2:55 PM
To: Lindgren, Sharon; Britten, Fred; Capps, Michele
Cc: Pearson, Melinda; Wellage, Mark
Subject: RE: Nikko Jenkins #59478

Thanks Sharon. Mr. Jenkins is discussed regularly at our multidiscipline meetings and Dr. Wellage is working with him on some type of discharge plan because he gets out in July of this year.

From: Lindgren, Sharon
Sent: Friday, March 08, 2013 2:05 PM
To: Britten, Fred; Capps, Michele; Busboom, Scott
Subject: Nikko Jenkins #59478

I received an "emergency grievance" from Mr. Jenkins in which he claims he is not receiving appropriate treatment for his mental health needs and is rapidly deteriorating. I am somewhat aware of Mr. Jenkins mental health problems, but this is the second emergency email such as this that I have received and he seems frantic. I just wanted to let you know and hoped that maybe mental health could at least go talk with him. I am actually treating this as a grievance of a sensitive nature but my response is that I have referred his concerns to the institution. Sorry.

Sharon M. Lindgren
Associate Legal Counsel
Nebraska Department of Correctional Services
Telephone: (402) 479-5952
Fax: (402) 479-5623

Emergency psychiatric hospitalization Emergency please help me!
 1-893
 Robert P Houston (NDCS) Director
 2013-1870
 Robert P Houston (NDCS) Director
 TSCI B7 SMU
 NEBRASKA DEPARTMENT OF CORRECTIONAL SERVICES
 INFORMAL GRIEVANCE RESOLUTION FORM
 UNIT STAFF
 FROM: JENKINS, NIKKO A # 59478 Facility/Housing Unit

PART A: Inmate Request/Concern.
 I, NIKKO ALLEN JENKINS # 59478 (TSCI) SMU UNIT B7 Isolations came to the director Robert P Houston in a privileged grievance for Emergency Removal from TSCI Facility for psychiatric hospitalization under the mental health act of (NE) chapter 71 Article 9 (NE) Statute # 71-908 & 71-956 In a now documented petition to the director of (NDCS) within (TSCI) Facility I am deteriorating physically psychologically & emotionally as my psychosis state of schizophrenia is not being treated in which is directly inducing the rapid mental declining my 8th Amendment of the Constitution is being violated as well as my Human Rights Articles 5 & 7 factually (TSCI) is also directly in violation of (NE) Law chapter 83 Article 3 Statute # 83-356 By allowing the self mutilations of me on
 Date: May 2nd 2013 & January 18th 2013 Resulting in four facial wounds & 40 stitches.
 Signature: _____

PART B: Response and Reason(s) for Decision Reached.

 Date: _____ Signature: _____

NOTE: A copy of this completed Informal Grievance Resolution Form must accompany any Staged Institutional Grievance Form.

PART C: Receipt.
 RETURN TO: Jenkins, Nikko # 59478 Facility/Housing Unit
 Last Name, First, Middle Initial Number

I acknowledge receipt this date of a complaint from the above inmate in regard to the following subject:
Mental Health 2013-1870

Date: 3/1/2013
 Signature of Unit Staff Receiving Complaint: _____

1-892

Lindgren, Sharon

From: Busboom, Scott
Sent: Friday, March 08, 2013 2:55 PM
To: Lindgren, Sharon; Britten, Fred; Capps, Michele
Cc: Pearson, Melinda; Weilage, Mark
Subject: RE: Nikko Jenkins #59478

Thanks Sharon. Mr. Jenkins is discussed regularly at our multidiscipline meetings and Dr. Weilage is working with him on some type of discharge plan because he gets out in July of this year.

From: Lindgren, Sharon
Sent: Friday, March 08, 2013 2:05 PM
To: Britten, Fred; Capps, Michele; Busboom, Scott
Subject: Nikko Jenkins #59478

I received an "emergency grievance" from Mr. Jenkins in which he claims he is not receiving appropriate treatment for his mental health needs and is rapidly deteriorating. I am somewhat aware of Mr. Jenkins mental health problems, but this is the second emergency email such as this that I have received and he seems frantic. I just wanted to let you know and hoped that maybe mental health could at least go talk with him. I am actually treating this as a grievance of a sensitive nature but my response is that I have referred his concerns to the institution. Sorry.

Sharon M. Lindgren
 Associate Legal Counsel
 Nebraska Department of Correctional Services
 Telephone: (402) 479-5952
 Fax: (402) 479-5623

Emergency psychiatric hospitalization Emergency please help me!
1-893 2013-1870

Robert P Houston
Director
NDCS

NEBRASKA DEPARTMENT OF CORRECTIONAL SERVICES
INFORMAL GRIEVANCE RESOLUTION FORM
UNIT STAFF

Robert P Houston (NDCS)
Director
TSCI B7 SMU
Facility/Housing Unit

FROM: JENKINS NIKKO A # 59478
Last Name, First, Middle Initial Number

PART A: Inmate Request/Concern.
I NIKKO ALLEN JENKINS # 59478 (TSCI) SMU Unit B7 Isolations came to the director Robert P Houston in a privileged grievance for Emergency Removal from TSCI Facility for psychiatric hospitalization under the mental health act of (NE) chapter 71 Article 9 (NE) Statute # 71-908 & # 71-956 In a now documented petition to the director of (NDCS) within (TSCI) Facility I am deteriorating physically psychologically & emotionally as my psychosis state of schizophrenia is not being treated in which is directly inducing the rapid mental declining my 8th Amendment of the Constitution is being violated as well as my Human Rights Articles 5 & 7 factually (TSCI) is also directly in violation of (NE) Law chapter 83 Article 3 Statute # 83-356 By allowing the self mutilations of me on
Date: May 2nd 2012 & January 18th 2013 Resulting in four facial wounds & 40 stitches.
Signature: [Signature]

PART B: Response and Reason(s) for Decision Reached.
Date: _____ Signature: _____

NOTE: A copy of this completed Informal Grievance Resolution Form must accompany any Staff Institutional Grievance Form.

PART C: Receipt.

RETURN TO: JENKINS NIKKO A # 59478 TSCI
Last Name, First, Middle Initial Number Facility/Housing Unit

I acknowledge receipt this date of a complaint from the above inmate in regard to the following subject:
Mental Health 2013-1870

3/1/2013 Date [Signature] Signature of Unit Staff Receiving Complaint

From: Houston, Bob
Sent: Monday, October 17, 2011 10:26 PM
To: Britten, Fred
Subject: Re: Nikko Jenkins #59478

Thanks, Fred

Thanks for considering his Douglas County time along with other considerations.

Bob

"Britten, Fred" <Fred.Britten@nebraska.gov> wrote:

Mr. Houston, Nikko Jenkins' Intensive Management status was reviewed in Institutional Classification last Thursday. Today I signed the classification to change his status from IM to AC.

Fred Britten, Warden
 Tecumseh State Correctional Institution
 e-mail : fred.britten@nebraska.gov
 Phone

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From: Britten, Fred
Sent: Wednesday, October 05, 2011 1:44 PM
To: Britten, Fred; Houston, Bob
Subject: RE: Nikko Jenkins #59478

Bob, just a little more info, Jenkins is not currently prescribed any medication, so his comment about not taking his medication is kind of a moot point. Just thought you should know. Thanks

Fred Britten, Warden
 Tecumseh State Correctional Institution
 e-mail : fred.britten@nebraska.gov
 Phone

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From: Britten, Fred
Sent: Wednesday, October 05, 2011 12:10 PM
To: Houston, Bob
Cc: Britten, Fred
Subject: Nikko Jenkins #59478
Importance: High

Bob, some additional information:

- On 9/30/11, a Use of force was initiated on Jenkins as he refused to cuff up so staff could remove property from his cell. Staff gave him multiple directives per procedure and warned of the potential reaction from the pepper spray. Jenkins responded, " I have to do what I have to do. "
- After several applications of pepper spray, Jenkins allowed staff to place restraints on him. A split sock was placed on him because of his combative frame of mind and his runny nose and watery eyes due to the pepper spray. The sock was an additional barrier preventing staff from exposure.
- Jenkins is currently scheduled to have his IM status reviewed prior to January 1, 2012. He was continued for four months on 9/1/11 due to the incident that led to his initial classification to IM and comments he made during his classification hearing indicating he getting more and more unstable and that he has a history of violence and he is not taking his meds because he doesn't trust the doctors at TSCI.
- Based on our conversation, I will have Jenkins reviewed next week and considered for AC.

Hope this information is helpful. Let me know what else you need. Thanks

Fred Britten, Warden
Tecumseh State Correctional Institution
e-mail : fred.britten@nebraska.gov
Phone

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From: Houston, Bob
Sent: Wednesday, October 05, 2011 9:26 PM
To: Britten, Fred
Subject: RE: Nikko Jenkins #59478

Good

Thanks, Fred

"Britten, Fred" <Fred.Britten@nebraska.gov> wrote:

Bob, just a little more info, Jenkins is not currently prescribed any medication, so his comment about not taking his medication is kind of a moot point. Just thought you should know. Thanks

Fred Britten, Warden
 Tecumseh State Correctional Institution
 e-mail : fred.britten@nebraska.gov
 Phone : 402-335-5104

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From: Britten, Fred
Sent: Wednesday, October 05, 2011 12:10 PM
To: Houston, Bob
Cc: Britten, Fred
Subject: Nikko Jenkins #59478
Importance: High

Bob, some additional information:

- On 9/30/11, a Use of force was initiated on Jenkins as he refused to cuff up so staff could remove property from his cell. Staff gave him multiple directives per procedure and warned of the potential reaction from the pepper spray. Jenkins responded, "I have to do what I have to do."
- After several applications of pepper spray, Jenkins allowed staff to place restraints on him. A split sock was placed on him because of his combative frame of mind and his runny nose and watery eyes due to the pepper spray. The sock was an additional barrier preventing staff from exposure.
- Jenkins is currently scheduled to have his IM status reviewed prior to January 1, 2012. He was continued for four months on 9/1/11 due to the incident that led to his initial classification to IM and comments he made during his classification hearing indicating he getting more and more unstable and that he has a history of violence and he is not taking his meds because he doesn't trust the doctors at TSCI.
- Based on our conversation, I will have Jenkins reviewed next week and considered for AC.

Hope this information is helpful. Let me know what else you need. Thanks

Fred Britten, Warden
 Tecumseh State Correctional Institution
 e-mail : fred.britten@nebraska.gov
 Phone : 402-335-5104

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From: Houston, Bob
Sent: Wednesday, October 05, 2011 12:32 PM
To: Kroeger, Concha
Subject: Fwd: Nikko Jenkins #59478

Concha,

Please print and place on my desk. Thanks!

Bob

Bob, some additional information:

- On 9/30/11, a Use of force was initiated on Jenkins as he refused to cuff up so staff could remove property from his cell. Staff gave him multiple directives per procedure and warned of the potential reaction from the pepper spray. Jenkins responded, " I have to do what I have to do. "
- After several applications of pepper spray, Jenkins allowed staff to place restraints on him. A spit sock was placed on him because of his combative frame of mind and his runny nose and watery eyes due to the pepper spray. The sock was an additional barrier preventing staff from exposure.
- Jenkins is currently scheduled to have his IM status reviewed prior to January 1, 2012. He was continued for four months on 9/1/11 due to the incident that led to his initial classification to IM and comments he made during his classification hearing indicating he getting more and more unstable and that he has a history of violence and he is not taking his meds because he doesn't trust the doctors at TSCI.
- Based on our conversation, I will have Jenkins reviewed next week and considered for AC.

Hope this information is helpful. Let me know what else you need. Thanks

Fred Britten, Warden
Nebraska State Correctional Institution
e-mail : fred.britten@nebraska.gov
Phone

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From: Hopkins, Frank
Sent: Thursday, April 11, 2013 12:04 PM
To: Sabatka-Rine, Diane
Subject: RE: Nikko Jenkins #59478

Thanks Diane.

Frank X. Hopkins
 Deputy Director-Institutions
 Nebraska Department of Correctional Services
frank.hopkins@nebraska.gov

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From: Sabatka-Rine, Diane
Sent: Thursday, April 11, 2013 10:42 AM
To: Wayne, Larry
Cc: Houston, Bob; Hopkins, Frank; Wellage, Mark; Foster, Kathy
Subject: Nikko Jenkins #59478

As an update, JENKINS was transferred from TSCI to NSP on March 15, 2013. Since his arrival, his behavior in the Control Unit has been appropriate. We reviewed and approved him for the Transition Confinement program at this morning's Institutional Classification Committee. The next Transition Confinement class will not begin for a few more weeks, so JENKINS will remain in the Control Unit until the program begins. Given his July 30, 2013 Tentative Release Date, he will have the opportunity to work through most of the Transition Confinement Program before he is discharged from NDCS.

If you have questions or concerns relative to this matter, please let me know. Thank you.

From: Wayne, Larry
Sent: Thursday, March 14, 2013 10:25 AM
To: Sabatka-Rine, Diane; Britten, Fred
Cc: Houston, Bob; Hopkins, Frank; Moreland, Jerall; Wellage, Mark; Foster, Kathy; Young, Konda
Subject: TSCI Inmate Nikko Jenkins #59478

We are attempting to situate Inmate Jenkins in the best possible position for his upcoming discharge on June 30, 2013. He has been a challenging individual to deal with. To this end we've agreed with The Ombudsman's Office for two things:

- 1.) We will move Mr. Jenkins from AC at TSCI's Special Management Unit to AC at NSP's Control Unit. This will provide the fresh start in segregation locations which Mr. Jenkins has requested.
- 2.) Dr. Wellage and Kathy Foster will meet with Jerall Moreland and I to discuss whatever other discharge planning may be appropriate for Mr. Jenkins. Much effort has already been expended in this area, particularly by Dr. Wellage and Ms. Foster. Our current thoughts are Mr. Jenkins will likely discharge from NSP's Control Unit. If there are plans we can make for returning him more safely to the community in June, we will explore these. Ms. Young will coordinate this meeting.

Please let me know if you have questions or need clarification. Thanks.

**Harry Wayne
Deputy Director
Programs and Community Services
Nebraska Department of Correctional Services
P.O. Box 94661
Lincoln, NE 68532-4661
Office: 402 479-6721
Cell:**

From: Wayne, Larry
Sent: Wednesday, April 24, 2013 11:08 AM
To: Wellage, Mark
Subject: RE: TSCI Inmate Nikko Jenkins #59478

Thanks Mark.

Larry Wayne
 Deputy Director
 Programs and Community Services
 Nebraska Department of Correctional Services
 P.O. Box 94661
 Lincoln, NE 68532-4661
 Office: 402 479-5771
 Cell: 1 _____

From: Wellage, Mark
Sent: Tuesday, April 23, 2013 2:46 PM
To: Wayne, Larry
Subject: Fwd: TSCI Inmate Nikko Jenkins #59478

My discussion with segregation staff yesterday seem to indicate that he would go to the next available bed in the transition program....

Sent from my Verizon Wireless 4G LTE DROID

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

Subject: Re: TSCI Inmate Nikko Jenkins #59478
From: Jerall Moreland <jmoreland@leg.ne.gov>
To: "Wayne, Larry" <Larry.Wayne@nebraska.gov>
CC: "Lux, Marshall" <mlux@leg.ne.gov>, "Houston, Bob" <Bob.Houston@nebraska.gov>, "Hopkins, Frank" <Frank.Hopkins@nebraska.gov>, "Sabatka-Rine, Diane" <Diane.Sabatka-Rine@nebraska.gov>, "White, Cameron" <Cameron.White@nebraska.gov>, "Weilage, Mark" <Mark.Weilage@nebraska.gov>, "Foster, Kathy" <kathy.foster@nebraska.gov>, "Davis III, James" <jdavis@leg.ne.gov>, "Schmeits, Sean" <sschmeits@leg.ne.gov>, Cynthia Grandberry <cgrandberry@leg.ne.gov>

Larry, I have added a couple of communications that the Ombudsman's Office has had concerning Mr. Jenkins. The response from you in this matter, in our opinion (James Davis, Sean Schmeits and I) does not capture the meeting we had on March 20, 2013. This is unfortunate. As you know, we discussed time lines and action items to assure Mr. Jenkins moved through the system. One of the reasons for the meeting, in any stretch of the imagination, was to make sure issues such as institutional resources, time and any other reasons outside of Mr. Jenkins being uncooperative wouldn't negatively effect the transitional plan. Therefore, It appears the only thing left to discuss with this matter is that the Department recognize the need to follow the transition plan discussed at the meeting.

Jerall Moreland, Assistant Ombudsman
 Ombudsman's Office
 402-471-2035
jmoreland@leg.gov.ne



On Tue, Apr 23, 2013 at 2:11 PM, Wayne, Larry <Larry.Wayne@nebraska.gov> wrote:

Jerall: I believe we did discuss timeframes in general given his July 30 release, but we did not state he'd be in any one place at any particular time. I believe Dr. Wellage has, or will be seeing Mr. Jenkins soon. I also know Ms. Foster has seen him. Finally, I did visit with Warden Sabatka-Rine and who indicated Mr. Jenkins has been doing well and was being considered for further classification review with movement as appropriate. I specified to her this should occur in line with institutional resources for time and space along with trying to situate Mr. Jenkins to have the best chance of success now and after his upcoming release. Let me know if you wish to discuss further.

Larry Wayne

Deputy Director

Programs and Community Services

Nebraska Department of Correctional Services

P.O. Box 94661

Lincoln, NE 68532-4661

Office: [402-479-6721](tel:402-479-6721)

Cell:

From: Jerall Moreland [mailto:jmoreland@leg.ne.gov]
Sent: Tuesday, April 23, 2013 12:43 PM
To: Wayne, Larry
Cc: Lux, Marshall; Houston, Bob
Subject: Re: TSCI Inmate Nikko Jenkins #59478

Larry, I just found out that you attempted to contact me on several occasions yesterday April 22, 2013 concerning Mr. Nikko Jenkins. Thank you, as I was not aware of your attempt prior to the e-mail. I look forward to discussing the points concerning Mr. Jenkins matter with you further. Jerall

On Tue, Apr 23, 2013 at 10:16 AM, Jerall Moreland <jmoreland@leg.ne.gov> wrote:

Larry,

I received a update from Warden Sabatka-Rine on Mr. Nikko Jenkins approximately 10 days ago. Essentially, the report I received from Warden Sabatka-Rine is that Mr. Jenkins has been appropriate while housed under AC. As you know, the Ombudsman's Office and DCS representatives met on March 20, 2013, to discuss an appropriate transition plan for Mr. Jenkins, who is scheduled to be discharged in June of 2013.

During the meeting we were told that after 30 more days on AC, Mr. Jenkins would transition to the NSP transition unit barring any compelling reasons. It has been 30 days since the meeting and still Mr. Jenkins has not been transferred as agreed upon. We would like to see the Department carry out the actions that the Department committed to put in place.

Additionally, during the meeting, we were told that Mr. Jenkins would be seen by Mental Health every 15 days. Again, it is my understanding that these actions were not carried out as well. However, I can share that Kathy Foster the DCS Social Worker has carried out all of her actionable items and I commend her for that.

I have attempted to contact you concerning this issue through messages left at your office and no response. Additionally, Warden Sabatka-Rine was to speak to you concerning the issue and get back to me. At this time, I would ask that you respond to the actions not carried out to date, and let me know if the Department intends to meet the objectives discussed for Mr. Jenkins transition plan?

Thanks, Jerall

On Fri, Mar 15, 2013 at 10:48 AM, Jerall Moreland <jmoreland@leg.ne.gov> wrote:

Larry,

Thank you for moving forward with the transfer consideration for Mr. Nikko Jenkins. I hope the action proves to be positive, but, realize

we are still dealing with a challenging situation. Thanks for the comments and review on the placement of Mr. Jenkins and the Ombudsman's Office looks forward to further discussion on strategies pertaining to his discharge plan.

As you know, recently, Director Houston and I communicated on several issues surrounding Jenkins. It is the Ombudsman's position that Director Houston has correctly identified one of the concerns we have with Jenkins cased, which in our opinion, is Mr. Jenkins being released directly into the community after spending such a long duration in a segregated status at a high security unit, without a comprehensive discharge plan.

Essentially, we believe a system to facilitate the return to lower levels of custody, to those housed in long-term segregation is important. Basically, it seems a person serving a sentence who would otherwise be released directly to the community from long-term segregated housing, should be placed in a less restrictive setting for the final months of confinement. Except in compelling circumstances. Our expectations reviewed for progress.

In this case, it seems a question needing to be addressed is if there is a compelling reason to not house Mr. Jenkins in a least restrictive setting, as he is closer to his release date. Maybe there is, but where is that setting at (transition unit, minimum facility, medium facility, Community Corrections, etc)?

In closing, I bring these elements to your attention for your thoughts. As you recently cancelled the meeting with Kathy Foster, Mark Weilage, you and I, that was scheduled for next Wednesday, I wanted to bring this to your attention. I will await to hear from you concerning rescheduling?

Jerall

 Jerall Moreland, Assistant Ombudsman
 Ombudsman's Office
 402-471-2035
Jmoreland@leg.gov.ne

From: Houston, Bob
Sent: Sunday, April 28, 2013 10:00 PM
To: Foster, Kathy; Kroeger, Concha
Subject: RE: Nikko Jenkins

Concha.....please remind me to send the attachment to Kathy.....thanks!! Bob

Sent from my Samsung Galaxy Tab 10.1
 "Foster, Kathy" <kathy.foster@nebraska.gov> wrote:
 Director, I did not get the attachment.

Kathy Foster, LICSW
 NDCS Director of Social Work
 4201 S. 14th Street
 Lincoln, NE 68502
 Phone: (402) 479-3094
 Cell:
 Fax: (402) 479-3028
 email: kathy.foster@nebraska.gov

From: Houston, Bob
Sent: Saturday, April 27, 2013 8:00 AM
To: amity.richards@douglascounty-ne.gov; Wayne, Larry; White, Cameron; Foster, Kathy
Cc: brenda.headle@douglascounty-ne.gov; nissa.jones@douglascounty-ne.gov
Subject: Re: Nikko Jenkins

Got it, Amity, thanks.

Larry, Kathy and Cameron.....for your consideration as we prepare Jenkins for release.

Thanks,

Bob

ent from my Samsung Galaxy Tab 10.1

"Richards, Amity B. (DC Atty Crim)" <Amity.Richards@douglascounty-ne.gov> wrote:

Mr. Houston:

Please see the attached documents Nissa Jones received from Nikko Jenkins, Inmate #59478.

**Amity Richards
Trial Assistant
Douglas County Attorney
100 Hall of Justice
Omaha, NE 68183
(402)444-3565**

From: Houston, Bob
Sent: Monday, April 29, 2013 2:43 PM
To: Richards, Amity B. (DC Atty Crim)
Subject: RE: Nikko Jenkins

Thanks, Amity!

From: Richards, Amity B. (DC Atty Crim) [<mailto:Amity.Richards@douglascounty-ne.gov>]
Sent: Monday, April 29, 2013 8:19 AM
To: Wayne, Larry
Cc: Houston, Bob
Subject: RE: Nikko Jenkins

Larry,

Here is the attachments that Bob meant to forward. Thanks!

Amity

From: Wayne, Larry [<mailto:Larry.Wayne@nebraska.gov>]
Sent: Monday, April 29, 2013 8:03 AM
To: Houston, Bob
Cc: Richards, Amity B. (DC Atty Crim); White, Cameron; Foster, Kathy; Beadle, Brenda D. (DC Atty Criminal); Jones, Nissa M. (DC Atty Criminal)
Subject: Re: Nikko Jenkins

Bob, my note from you does not include the attachment. Thanks

Sent from my Verizon Wireless 4G LTE DROID

"Houston, Bob" <Bob.Houston@nebraska.gov> wrote:

Got it, Amity, thanks.

Larry, Kathy and Cameron.....for your consideration as we prepare Jenkins for release.

Thanks,

Bob

Sent from my Samsung Galaxy Tab 10.1

"Richards, Amity B. (DC Atty Crim)" <Amity.Richards@douglascounty-ne.gov> wrote:
Mr. Houston:

Please see the attached documents Nissa Jones received from Nikko Jenkins, Inmate #59478.

Amity Richards
Trial Assistant
Douglas County Attorney
100 Hall of Justice
Omaha, NE 68183
(402)444-3565

1-865

MEMORANDUM

TO: Robert P. Houston, Director

DATE: June 12, 2013

RE: Policy Development for Inmates on Administrative Confinement Approaching Release

FROM: Larry Wayne, Deputy Director

In reviewing overall Administrative Confinement policy and procedure the issue of inmates approaching release from prison while on Administrative Confinement was discussed at a meeting on June 10, 2013, between Kathy Foster, Social Work Director, Dr. Mark Wellage, Assistant Administrator for Behavioral Health, Mental Health, Teresa Bittenger, Parole Supervisor for Reentry, and Larry Wayne. By way of background, we discussed three current inmates and the challenges they pose as they are somewhat instructive for the review and addressing of overall concerns in this area:

Nikko Jenkins, #59478: Mr. Jenkins has served much of the last few years on Administrative Confinement. More recently, external stakeholders have identified Jenkins upcoming July 30th mandatory discharge date as a concern. To address this, Jenkins (per his own request) was transferred from TSCI SMU to the Penitentiary Control Unit earlier this year. He appeared to be demonstrating progress in his new environment and was subsequently placed on the Transition Confinement program. After this, Jenkins again reverted to his more manipulative behavior. This included writing the Douglas County Attorney to plead his case for Regional Center Commitment and declining medication from Psychiatrist Dr. Jack. Ultimately, Mr. Jenkins cannot seem to discontinue his thinking that he will have an easier life if referred and/or committed to the Regional Center. His mother has indicated she will let him live with her, but Mr. Jenkins insists he has a number of women who want him to live with them. Ms. Foster says the best we can do as he approaches his July 30th release is to provide him with a list of people he can seek out should he decide he wants assistance. Referral for programming assistance upon release is not prudent given Mr. Jenkins current attitude of resistance.

_____ Mr. _____ is another inmate November of 2013. Mr. _____ is presently confined at the TSC. Inappropriate behaviors resulting in a longer term placement generally being disagreeable and uncooperative with staff attitude indicated most recently Mr. _____ was recommended for placement of transition at Work Release prior to his mandatory discharge was noncompliant with all mental health interventions, but clinical staff. This revealed a personality disorder with substance issues. In short, Mr. _____ an angry, noncompliant individual who does not accept psychologists visits as offered. He claims he has family in low security. We will attempt to expedite Mr. _____ transfer with transition in this area.

1-866

Mr. _____ has been housed in the Nebraska State Penitentiary Control Unit since his admission and lost all good time due to repeated acting out behavior. His tentative release date removes immediacy from discharge planning, but still makes him worthy of consideration in reviewing overall Administrative Confinement procedures. Mr. _____ is resistant to recommended treatment for anger management and highly averse to working with staff. Dr. Wellage has recommended with Warden Peart's concurrence that Mr. _____ be transferred to Lincoln Correctional Centers Transition Confinement Program. It is hoped that we will be better able to assess and evaluate Mr. _____'s mental status for determination of further programming be it mental health unit, general population or just simply working on his level of trust and cooperation with staff.

Discussion of these three inmates is believed instructive in guiding agency policy and practice for inmates on Administrative Confinement. The consensus opinion from Dr. Wellage and Social Work Director Kathy Foster are that *priority must be given in focusing resources on general population or Administrative Confinement inmates who are 1) mentally ill, 2) sex offenders or 3) violent offenders.* The limited resources available through clinical mental health staff and social workers underscore the legal mandate to treat these inmates with highest priority.

If no mental illness is present or diagnosed, then preparing an inmate anyway possible for parole is the next best alternative. This involves continuation of our efforts to fully implement the Transformation Project, Crisis Intervention and Conflict Management and Cognitive Restructuring (i.e. the 7 Habits of Highly Effective People) along with the levels program and building in additional privileges while reviewing the length of time an inmate spends on AC and the placement options for transitioning off of AC. Placement of such inmates on parole as appropriate will continue to provide opportunity for referring them to resources and direct services. This is not as effective after inmates have discharged as attitudinal and behavior problems leading to their placement remain counterproductive after release.

Recommended Policy and Practice Changes

As we have stated throughout evidenced-based case management and discharge planning should be employed. Readiness factors to consider for AC inmates might include:

- What behaviors caused them to come to segregation?
- History of behavior in prior segregation placements?
- How long have they been in segregation?
- How much time before release via parole or mandatory discharge?
- How are they behaving – misconduct reports?
- Overall citizenship on AC; how do they get along with staff and other inmates? Are they compliant?
- Threat posed upon return to GP; are they STG members who will have difficulty in GP?

1-867

- Program compliance; are they making a good faith effort in Transformation Project/Cognitive Restructuring?
- How are they doing with the levels program associated with stable behavior and graduated release? This might include showering without restraints, feeding assignments, eating in groups, opportunity for more movement, exercising in groups and participation in small groups for staff facilitated Transformation Project modules.

Inmates who are successfully engaged in these areas will likely present greater potential for moving to less restrictive environments. Current initiatives such as Conflict Resolution and Crisis Intervention along with the Transformation Project and 7 Habits of Highly Effective People being provided by non-clinical staff will go a long way toward prevention as a front end alternative to segregation and intervention after inmates are released from AC. Reentry to general population should be approached along the same lines as transition to Community Corrections (using the readiness index) or onto parole utilizing the parole risk factors. As an agency, if we are able to equip line staff with these tools for bringing about effective behavior we will go a long way toward approaching inmates on administrative confinement in a proactive versus reactive fashion.

1-560

3) Comments

Terry Ewing Report Abuse Terry Ewing - 19 minutes ago This investigation is unfortunate, but necessary. The families of the victims of Jenkins criminal rampage represent the collateral damage caused by the administration at the Nebraska Department of Correctional Services. The leadership sold out to the highest bidder in exchange for keeping their jobs and a failed attempt to save tax dollars. Their plan was ill conceived and abandoned the wisdom of years of correctional experience and the best practices developed from that experience. Former Director Bob Houston reduced staffing, gutted treatment programs and ignored the long standing mission statement:

The mission of the Nebraska 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.

Before the Houston administration abandoned their failed plan to cut operating expenses, the damage was done. Bob Houston ordered the Mental Health Administrator to change the clinical recommendations from in-patient treatment to out-patient so upwards of 1000 additional inmates would be eligible for community release. On February 13, 2013, Director Houston testified before the Legislature's Judiciary Committee in opposition to LB379 which proposed changes (reductions) in the good time credits and furloughs granted to certain (violent) inmates. The current administration under the leadership of Director Michael Kenney has continued to operate under the conditions created by Director Houston. Overcrowding is a looming disaster that has no viable relief in sight. There's been no change to the amount of good time earned and only the amount of good time that can be forfeited has been adjusted as a result of these tragedies. Soon after his appointment, Director Kenney told me "Candidly, your commentary on Bob (Houston), even if true, is pretty steep – and you implicate the rest of Central Office Exec staff as well. I believe those folks were following the orders given to them and that's a tough position to be in when there's no law being broken or moral code being overtly ignored. These were discretionary decisions, and even if they went south, there (sic) were within Bob's discretion to make as Director". Director Kenney has been flying under the radar since taking office and has been called the "Stealth Director". Director Kenney appears to be perpetuating the mistakes made by the Houston administration and continues to stand by Deputy Directors Hopkins, Wayne, Spindler and Kohl who stood by and let Houston destroy public confidence in the agency. I once believed Mr. Kenney was the right man for the job, but I now believe that he has placed a higher value on attaining and holding on to status and he lacks the courage to take the Department of Correctional Services in a public safety minded direction. The latest embarrassment for this agency was reported by the World-Herald on Saturday May 10, 2014, wherein it told the story of Quentin D. Jackson's pass to attend court with his girlfriend. Another example of poor judgment and a broken inmate classification system that continues to give breaks to violent offenders.

Nikko Jenkins received more than his share of breaks in prison while proving to be one of the most dangerous inmates we've ever known.

1-560

3) Comments

Terry Ewing Report Abuse Terry Ewing - 19 minutes ago This investigation is unfortunate, but necessary. The families of the victims of Jenkins criminal rampage represent the collateral damage caused by the administration at the Nebraska Department of Correctional Services. The leadership sold out to the highest bidder in exchange for keeping their jobs and a failed attempt to save tax dollars. Their plan was ill conceived and abandoned the wisdom of years of correctional experience and the best practices developed from that experience. Former Director Bob Houston reduced staffing, gutted treatment programs and ignored the long standing mission statement:

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Nikko Jenkins received more than his share of breaks in prison while proving to be one of the most dangerous inmates we've ever known.

FW: TSCI Inmate Nikko Jenkins #59478

15028

Subject: FW: TSCI Inmate Nikko Jenkins #59478

This is what I know.

From: Sabatka-Rine, Diane
Sent: Thursday, March 14, 2013 10:39 AM
To: Rouf, Mel; Crulckshank, Rich
Subject: FW: TSCI Inmate Nikko Jenkins #59478

FYI. This is the first time I have heard about this individual transferring here. If necessary, perhaps we can work out a trade with LCC for bed space reasons. Thanks!

From: Wayne, Larry
Sent: Thursday, March 14, 2013 10:25 AM
To: Sabatka-Rine, Diane; Britten, Fred
Cc: Houston, Bob; Hopkins, Frank; Moreland, Jerall; Weilage, Mark; Foster, Kathy; Young, Konda
Subject: TSCI Inmate Nikko Jenkins #59478

We are attempting to situate Inmate Jenkins in the best possible position for his upcoming discharge on June 30, 2013. He has been a challenging individual to deal with. To this end we've agreed with The Ombudsman's Office for two things:

- 1.) We will move Mr. Jenkins from AC at TSCI's Special Management Unit to AC at NSP's Control Unit. This will provide the fresh start in segregation locations which Mr. Jenkins has requested.
- 2.) Dr. Weilage and Kathy Foster will meet with Jerall Moreland and I to discuss whatever other discharge planning may be appropriate for Mr. Jenkins. Much effort has already been expended in this area, particularly by Dr. Weilage and Ms. Foster. Our current thoughts are Mr. Jenkins will likely discharge from NSP's Control Unit. If there are plans we can make for returning him more safely to the community in June, we will explore these. Ms. Young will coordinate this meeting.

Please let me know if you have questions or need clarification. Thanks.

Larry Wayne
 Deputy Director
 Programs and Community Services
 Nebraska Department of Correctional Services
 P.O. Box 94661
 Lincoln, NE 68532-4661
 Office: 402-479-5721
 Cell:

From: Hopkins, Frank
Sent: Tuesday, February 26, 2013 2:15 PM
To: Kohl, Randy; White, Cameron
Cc: Houston, Bob
Subject: FW: Nikko Jenkins
Attachments: 3158_001.pdf

FYI.

Frank X. Hopkins
 Deputy Director-Institutions
 Nebraska Department of Correctional Services
frank.hopkins@nebraska.gov

The information contained in the e-mail message is intended for the confidential use of the recipients named above. If the reader of this message is not the intended recipient, you are hereby notified that you have received this document in error, and any review, dissemination, distribution, or copying of this message is strictly prohibited. If you received this document in error, please notify us immediately by e-mail and delete the original message.

From: Capps, Michele
Sent: Tuesday, February 26, 2013 2:10 PM
To: Hopkins, Frank
Cc: Britten, Fred
Subject: Nikko Jenkins

Hi Mr. Hopkins, I have the information attached. He will be reviewed on or before 04-20-13 for his AC and has DS until 04-22-13. His TRD is 07-30-13. If you need more information, please let me know. Thanks

Michele Capps, Deputy Warden
 Tecumseh State Correctional Institution
 P.O. Box 900
 Tecumseh NE 68450
 Office: 402-335-5128
 Fax: 402-335-5115
Michele.Capps@nebraska.gov

From: dcs.coplers@nebraska.gov [<mailto:dcs.coplers@nebraska.gov>]
Sent: Tuesday, February 26, 2013 2:06 PM
To: Capps, Michele
Subject: Attached Image

Nebraska Department of Correctional Services

RECLASSIFICATION NARRATIVE FORM
ADDENDUM A

Name: Jenkins, Nikko Number: 59478 Date Completed: 12/11/2012
Next Review: 1/13/2013 PED: 8/15/2010 TRD: 6/30/2013
Parole Status: Deferred

Prepared by: Unit Case Manager Weiner, SMU/Tecumseh State Correctional Institution

This inmate is being referred to the proper department authorities for a classification action:

(Underline) Initial - Removal - Continue
 (Underline) Intensive Management - Administrative Confinement - Protective Custody

Criminal History: Jenkins is serving an 18 to 21 year sentence for two counts of Robbery, Use of Deadly Weapon to Commit a Felony, Assault in the second degree, and Assault on a Peace Officer/DCS employee. .

Reason for placement: On December 17, 2009 Inmate Jenkins was taken on a travel order to Omaha, NE for his grandmother's funeral. During that travel order inmate Jenkins assaulted staff in a botched escape attempt. This resulted in a staff injury.

Inmate Jenkins was found guilty in misconduct report #1BSZ of Assault, Escape, and disobeying an order, Inmate Jenkins received a sanction of 60 days disciplinary segregation and 3 months loss of good time.

Inmate Jenkins was charged and convicted of Assault on a DCS employee in connection with this incident as well.

Relevant Information: On 12/17/2009, prior to leaving the institution for the church Inmate Jenkins stated that he would have to use the restroom immediately after arrival. On the way to the church, Inmate Jenkins began to speak to himself and talked about his childhood. After arriving at the church Inmate Jenkins stated that he needed to use the restroom. Inmate Jenkins stated that he needed to have his hand free from the restraints in order to use the restroom. One hand was unsecured from the restraint. The other hand was then unsecured to readjust the restraints. Once the second hand was unsecured, Inmate Jenkins stated that he had been around (the escorting staff) and didn't want them to get hurt. Inmate Jenkins stated that his "boys" were outside and if he (Inmate Jenkins) started fighting, it would get bloody. Inmate Jenkins also stated that his "boys" would shoot up the place and it would be a blood bath. Inmate Jenkins told staff to take off the leg restraints so he could walk out of there. Inmate Jenkins then attempted to walk out of the bathroom. Staff blocked the door way preventing him from leaving.

After attempts to intimidate staff were unsuccessful Inmate Jenkins began to unbutton his clothing, which indicated to staff that Inmate Jenkins was preparing to fight. Staff was able to restrain Inmate Jenkins left hand while Inmate Jenkins was talking. Inmate Jenkins then hit a staff member in the face with his fist. Staff then muscled Inmate Jenkins to the floor in an attempt to control him and place him in restraints. While attempting to place Inmate Jenkins in restraints, Inmate Jenkins attempted to bite staff. Inmate Jenkins began to yell to family members who were also attending the funeral. Inmate Jenkins was attempting to get assistance from family. Inmate Jenkins sister joined in and assaulted a staff member. Inmate Jenkins was restrained and escorted out of the church and placed in the vehicle he was brought to the church in. Inmate Jenkins stated that no one had better sit in the back with him. Law Enforcement was requested to assist in the escort of Inmate Jenkins back to the institution.

On 05/09/2012, TSCI staff monitored a video visit that occurred on 05/05/2012 at approximately 0930 hours between female visitor Sherry Floyd and Inmate Jenkins, Nikko #59478. Floyd also had a minor with her at the time of the visit. There was also 4 other people visiting another inmate at this time in the video visit room. At the beginning of the visit, Jenkins was sitting with his back toward the monitor, as if he did not want to visit. Then, he picks up the receiver. Sherry Floyd asks him if he is prepared for a visit today. Inmate Jenkins replies: "Look at me bitch what the fuck do you think you are looking at?" Floyd states: "Are you going to start the conversation off like that?" After Inmate Jenkins is silent for approximately one minute, he states to Floyd, "You are a fuckin failure, you know that? A big fuckin failure. And you know what just by reading your body language and seeing how calm you are right now, they told you about this and they prepared you for this." (Inmate Jenkins is referring to the stitches on his face) "You stupid bitch you think I'm stupid, you're working with these mother fuckers. It's fuckin funny to me. That you would co-hoot with such stupidity you stupid pathetic mother fuckin slut. That's what's so funny, you were already prepared for this, I know your little sympathetic and weak ass heart bitch, it you didn't already know about this you would have been crying and broke down." Floyd states: "you know what I am trying to be calm to keep our daughter calm." Floyd refers to a letter that Inmate Jenkins sent her and how she has been stressed out. Inmate Jenkins states "you are a sneaky conniving bitch for not listening to my family. You are trying to tell me you didn't know about this before you sat down, you lied to me just that fast, but it's ok, it's ok." Floyd states "Nikko, I can leave." Jenkins replies "Ok see ya, I will let you walk out on me so at least you can't say I walked out on you." He continued to speak to her in an abusive threatening manner. A few minutes later, Jenkins states "Did you get the manila envelope that I sent you that told you go Google the administration? You stupid fucking bitch, wait and see what I do you your ass, I got something for you though. You want to play these games and be a half way ass bitch I'm going to show you some half way shit?. I promise you, I promise you. Don't bring up this shit about my hoe-bitch mamma. I know she's a fucking hoe bitch slut. But I love that hoe bitch because she gave birth to this alpha elite." Floyd states: "I see you face and quit talking to me that way. Ok come on, you are leaving." Floyd is visibly upset, crying, and trying to remain calm. Approximately 6 minutes later, Floyd hangs up the receiver. Jenkins states: "you had better pick that fucking phone up, I know that." Jenkins waits on the line for approximately 3 minutes and then hangs up the receiver.

On 5/01/2012 Inmate Jenkins was observed by staff to have two large cuts on his face and forehead. A large amount of blood was found on the shelf that is located above the sink in the cell, leading staff to believe that Inmate Jenkins fell on the shelf or used the shelf to inflict the wounds upon his face and forehead. Inmate Jenkins was taken to medical where he received stitches to close both wounds.

On 4/29/2012 Inmate Jenkins broke a fire suppression head his cell, which flooded both the cell and a large portion of upper F gallery in the Special Management Unit.

On 4/28/2012 Inmate Jenkins was placed in therapeutic restraints after he made threats toward himself and staff. Inmate Jenkins also attempted self-harm by wrapping the drop chain from the side arm restraint around his neck.

On 1/19/2012 Inmate Jenkins was attending a video visit. During that visit Inmate Jenkins instructed his visitors to watch for a specific TSCI staff member and to watch for what the staff member drove and what the license plate number on the vehicle was. The visitor watched for the staff member and replied "it's a". The visitor then talks about how she got the addresses of staff here and it is public information. Inmate Jenkins then instructed the visitor to find out information on a TSCI staff member who was on the 11-17-2009 travel order when Inmate Jenkins assaulted staff in a botched escape attempt. Inmate Jenkins gave the visitor the staff member's name and instructed her to write it down. Inmate Jenkins then stated: "Look how they did me, took this handcuff off; they wanted me to give him a scar and split his face open, ha ha but not today." Jenkins then talks about what he is going to tell the law when he gets out, how there ain't enough room in this town for both of them. Inmate Jenkins refers to the

police as Johnny Law. Inmate Jenkins was found guilty of Use of Threatening Language or Gestures/Fighting and was given 1 ½ months loss of good time and 45 days Disciplinary Segregation.

Upon returning to TSCI from Douglas County inmate Jenkins made comments to staff that he is a dangerous individual and is not very stable at this point. On September 30, 2011 inmate Jenkins was placed on limited property for use of a homemade retrieval device. He was attempting to pass and receive with another intensive management inmate while on the yard. Follow his placement on limited property inmate Jenkins became upset due him only being allowed one blanket. Inmate Jenkins incited two other inmates to refuse to comply with staff directives to leave their yards. This incident led to two uses of force by way of chemicals being deployed. Inmate Jenkins is consistently telling staff that he is not a stable individual and is seriously mentally ill.

On Jan. 26, 2009 inmate Jenkins #59478 approached staff in the TSCI yard. Inmate Jenkins #59478 passed a letter to staff. Inmate Jenkins #59478 was taken to holding for this act. A strip search was conducted by staff in TSCI holding. During this search, staff retrieved a manufactured weapon concealed in the waistband of inmate Jenkins #59478 state issue khaki pants. The weapon retrieved was approximately 5"- 6" piece of a toilet brush sharpened to a point.

On February 17th, 2007, inmate _____ was assaulted by inmates Nikko Jonkins #59478, _____, and _____ in the E1 wing shower E-Unit LCC. During this assault, inmate Jenkins struck inmate _____ numerous times in the head with his fist. A weapon (lock) was used in this assault against inmate _____ and was attributed to inmate _____. Inmate _____ appears to have been assaulted because he instructed another unknown inmate to assault inmate Jenkins. Inmate _____ did this while presenting himself as the LCC leader of the criminal threat group La Vida, after inmate _____ was removed from general population. Inmate _____ is also a member of Surreños 13 (Criminal Threat Group) with 5 of his 7 documented tattoos representing membership in that group. Inmate Jenkins is a member of the "Crips" criminal threat group.

- On July 4th, 2005, inmate Jenkins was involved in an incident that caused a riot situation on the yard at NCYF. Inmate Jenkins ignored and evaded staff for 10 minutes in order to re-engage in attacks on other inmates.
- Inmate Jenkins received a misconduct report for gang activities on 10/30/06.
- An investigation at OCC revealed that on 1/4/07 inmate Jenkins assaulted inmate _____ resulting in inmate _____ receiving nine stitches to the inside of his upper lip.
- February 16th and 17th, 2007 There were multiple fights at LCC. The common theme through all these altercations is centered on inmate _____ and his quest to organize the Native American inmates at LCC for "control" of the yard and increasing the membership in La Vida security threat group. The other inmate faction involved in these altercations was the Crips security threat group. The volatile nature of this conflict and the willingness of both side to engage in assaults of multiple inmates on one has led to the placement of the parties involved on Administrative Confinement.
- Mr. Jenkins was recommended for placement in the Transitional Confinement program at NSF. However, due to recommendations by Unit Staff as well as Mental Health he was removed from that last. The reason was that inmate Jenkins has consistently expressed having ongoing homicidal ideations and has indicated that his past gang life will haunt him when he gets out.

Misconduct Report History: Inmate Jenkins incurred 12 misconduct reports in the past 12 months including the following charges: two class I, five class II, and 13 class III.

Interactions with Staff and Inmates: Inmate Jenkins interactions with staff and inmates have been limited since his return to TSCI. It is noted that inmate Jenkins has assaulted staff and attempted to escape while on a travel order. Inmate Jenkins made comments to staff that he is a dangerous individual

and is not very stable at this point. Inmate Jenkins has been on my caseload for nearly three years and his behaviors are consistent. Inmate Jenkins attempts to manipulate other inmates into misbehaviors to help his "causes" so he can claim that by looking at his institutional record he is an upstanding inmate. Inmate Jenkins has no regard for authority and seems to believe that his escape attempt and staff assault should have no regard on his current placement or continue to make him a risk for the safety and security of the institution.

Current Programming: Jenkins is currently on level 2A of the SMU levels program.

Goals that could enhance the inmate's ability to be classified to a less restrictive status in the future:

- Sustain successful participation in the SMU Incentive Program
- Practice positive interaction and cooperation with staff
- Maintain appropriate noise levels at all times. i.e. kicking doors, inciting others, disrupting daily operations.
- No Misconduct Reports
- Maintain sanitation and hygiene in accordance with administrative regulations
- Show appropriate interactions with other inmates.

Recommendation: The Unit team recommends inmate Jenkins, Nikko #59478 is continued on AC with a review in 4 months.

Preparer's Signature

CTS055QI QUICK CHECK INFORMATION 02-26-2013
ID 59478 - 1 JENKINS/NIKKO A CURR LOCATION TSC SMUB 07
RECEIVED DATE 11/17/2003

BIRTH CITY/STATE/COUNTRY: DENVER / CO / USA

RACE BLACK SEX MALE CURR AGE 26 DOB 09/16/1986
MRTL MARRIED CNSLR NBR 30
-SSN FBI 889405CC9 SID NB412836
DRUG DP 28-416 NO DNA TESTED SEX OFFENDER NO

CURR CUSTDY DT 02/07/2007 CURR TYPE MAXIMUM

CURR JOBS ASGN ALL DAY JOBS DESC UNASSIGNED

CURR OPEN NTFY 0 OPEN DTNR 0
SENT BEGN DATE 10/17/2003 TERM YYY MM DD -TO YYY MM DD LAW JAIL
MIN 18 MAX 21 364 DEAD 2 2 1

PROL ELIG DATE 08/15/2010 NEXT ANN 07/30/2013
TENT RLSE DATE 07/30/2013

PBRD MEET DATE 09/10/2012 MEET TYPE PAROLE BOARD REVIEW MEETING
NEXT MEET DATE 09/01/2013 PBRD STAT MANDATORY DISCHARGE
FINL HEAR DATE PBRD EFTV

PROL EARN DISC RVCT DESC
RVCT HEAR DATE

INST RLSE DATE RLSE TYPE
PROL DISC DATE DISC TYPE

CONTACT ADDRESS 3811 NO 36TH / OMAHA / NE / 68111

F1=HELP
F5=NAME INQUIRY
F9=PUBLIC INFO

F10=PAROLE INQUIRY

F3=EXIT
F7=TIME/SENTENCE
F11=MOVEMENT INQUIRY

F4=INMATE ALIAS
F8=OFFENSE INFO

CTS055TI

TIME/SENTENCE INQUIRY

02-26-2013

PAGE 0001 OF 0001

ID 59478 - 1 JENKINS/NIKKO A

CURR LOCATION TSC SMUB 07
RECEIVED DATE 11-17-2003

*ALPHA OFFENSE 2 CTS ROBBERY/USE OF DEAD WEAP
SENTENCE BEGIN -TERM YYY MM DD -TO- YYY MM DD
10-17-2003 MIN 18 MAX 21
GOOD TIME DAYS:ALLOW YYY MM DD LOST YYY MM DD

JURIS NEBRASKA
LAW
364
BAL YYY MM DD
9
JAIL YYY MM DD
2 2 1
DEAD

PROL 9
MERT
GBMD 10 6 1 5 15
CRDT
L191

PROL ELIG DATE 08-15-2010
TENT RLSE DATE 07-30-2013
NEXT REVW DATE 09-01-2013

PBRD STAT MANDATORY DISCHARGE
NEXT ANN 07-30-2013

DTNR RECEIVED LAW ENFORCEMENT JURIS: ST
-----*-----*-----*-----*-----*
NO.. OPEN DTNR

F1=HELP F3=EXIT F4=MISCONDUCT F5=DTNR/NTFY F7=BKWRD F8=FRWRD
F10=QUICK CHECK F11=OFFENSE

My Dashboard Corrections Active Corrections EDPV Corrections EOM Inmate Case File

Welcome, PHM1mat Dashboard - Answers - Most Products - My Account - Log Out

Dashboard Reports

Time Count MAST HEAD Inst Prog Rpt Reporter Classify Just Detainers ICS Report CCO Inmate Form Release Action DT-Act Request Control Monitoring HR Hit Prior to 2008 Visit Hit Prior to 2008 MRRF OCC Monthly Report MRRF LCC PHO Monthly Report MRRF TSCC PHO Monthly Report Educ Record OCC-L DAILY SHEET NCYF Count Sheets Time / Sentence

Enter both ID Numbers

ID Number: 08470 Supervisor / ID Number: 08474

Nebraska Department of Correctional Services Reporter Classify Date Run: 2/26/2013

Inmate Information:

Inmate Name: JENKINS, NIKKO A ID Number: 08470 B-Code: 100 RMA Type: 01 PEO: 170012013, L0364 DT-Act: 01/17/2013

Violence Potential:

CTU Ctg: 010000 Violent Risk: 010000 Violence To Other Inmates: 010000 Violence To Staff/Volunteers: 010000

Control Monitoring:

Table with columns: Date, ID Number, Inmate Name, Inmate ID, Depelator Number, Separated Name, At, Control Monitoring. Includes text: 'You are being tracked please call in the night...'

No PREA data is available for this Inmate. Refresh

Inmate Information:

Case #/Date: 1X 2/1/2008 Review Date: 2/1/2013 Hearing Date: 0 Det Ct: 0 Hold Ct: 0 Not Ct: 0

Physical Characteristics:

Height: 5'11" Weight: 175 lbs Eyes: BROWN Hair Color: BRN Race: WDOB: 01/17/1980 Age: 28

Scars, Marks, Tattoos:

Body Description: Male, 5'11" Height, 175 lbs Weight, BRN Hair, BROWN Eyes, WDOB: 01/17/1980, Age: 28. Scars: None. Tattoos: None.

Sentences:

Date: 10/1/2009 Min: 0 Max: 21 Begn Date: 10/1/2009

Offense Information:

Table with columns: ID Number, Inmate Name, Offense Code, Offense Description, County, Sentence Length. Includes offenses like 'VIOLATION OF PAROLE' and 'VIOLATION OF RESTRICTIONS'.

Misconduct Report History:

Table with columns: MCH Date, Report Number, Charge, Change Date, Action. Includes reports for 'VIOLATION OF RESTRICTIONS' and 'VIOLATION OF PAROLE'.

Oracle BI Interactive Dashboards

12/10/2000	0	2	3N	VIOLATION OF REGULATIONS	VERBAL WARNING/REPRIMAND
12/20/2000	0021	2	2C	TATTOO ACTIVITIES	14 DAYS ROOM RESTRICTION
12/19/2000	0011	1	3C	VIOLATION OF SANCTIONS	VERBAL WARNING/REPRIMAND
12/06/2000	0030	1	2R	DOMESTIC SECURITY THREAT ORIGIN ACTIVITY	7 DAYS ROOM RESTRICTION
12/25/00	4005	3	3N	VIOLATION OF REGULATIONS	VERBAL WARNING/REPRIMAND
01/18/2001	4487	2	3N	DOMESTIC SECURITY THREAT ORIGIN ACTIVITY	VERBAL WARNING/REPRIMAND
01/10/2001	4322	2	3C	POSSESSING OR RECEIVING UNAUTHORIZED ARTICLES	14 DAYS ROOM RESTRICTION
02/27/2001	1400	1	3B	DESTRUCTION OF PROPERTY UNDER \$100	RESTRICTION OF 12 HR
2/11/2001	003	1	3C	POSSESSING OR RECEIVING UNAUTHORIZED ARTICLES	14 DAYS DISCIPLINARY RESTRICTION
01/29/2001	0110	2	3N	VIOLATION OF REGULATIONS	VERBAL WARNING/REPRIMAND
		3	3N	VIOLATION OF REGULATIONS	VERBAL WARNING/REPRIMAND
		2	3C	POSSESSING OR RECEIVING UNAUTHORIZED ARTICLES	14 DAYS DISCIPLINARY RESTRICTION
01/03/2001	0052	3	3N	VIOLATION OF REGULATIONS	VERBAL WARNING/REPRIMAND
		2	3C	POSSESSING OR RECEIVING UNAUTHORIZED ARTICLES	VERBAL WARNING/REPRIMAND
04/06/01	0177	1	2E	DISOBEDIENCE AN ORDER	VERBAL WARNING/REPRIMAND
02/20/2001	1120	1	3B	DESTRUCTION OF PROPERTY UNDER \$100	RESTRICTION IN THE AMOUNT OF \$150
01/17/2001	470	1	3B	DESTRUCTION OF PROPERTY UNDER \$100	RESTRICTION 12-35 TOWEL
2/12/2001	400	1	2C	TATTOO ACTIVITIES	1 MONTH LOSS GOOD TIME
12/16/2000	0700	3	3N	VIOLATION OF REGULATIONS	100% 3 HOURS ROOM RESTRICTION DIS 12/22/00-12/28/00
11/02/00	02012	1	2J	UNAUTHORIZED ACCESS	100% 6 HOURS EXTRA DUTY TO BE COMPLETED BY 12/06/00
12/30/2000	01800	1	2R	DOMESTIC SECURITY THREAT ORIGIN ACTIVITY	100% 1 DAY ROOM RESTRICTION ON 12/10/00 TO 12/11/00
10/23/2000	02006	1	2H	FAILURE TO WORK	100% 10 HOURS EXTRA DUTY TO BE COMPLETED BY 12/10/00
10/14/2000	2010	1	2C	TATTOO ACTIVITIES	1 MONTH LOSS GOOD TIME
10/06/2000	2044	1	3N	VIOLATION OF REGULATIONS	7 DAYS W/D ROOM
03/23/00	1420	1	3C	VIOLATION OF SANCTIONS	7 DAYS ROOM
02/10/2000	1280	1	3N	VIOLATION OF REGULATIONS	7 DAYS
02/12/2000	1202	1	3I	VIOLATION OF REGULATIONS	7 DAYS ROOM
01/07/2000	051	1	3N	VIOLATION OF REGULATIONS	7 DAYS W/D ROOM
01/23/2000	005	1	3N	VIOLATION OF REGULATIONS	20 HOURS
12/01/2000	0110	1	3C	POSSESSING OR RECEIVING UNAUTHORIZED ARTICLES	10 HRS X DUTY
10/31/2000	0004	1	1I	DRUG OR DRUG CASE ABUSE	7 DAYS IN REL 11-11 OFFER TO DRUG OFFENDER CLASS
10/17/2000	0025	1	3F	SELLING, LOANING, OR GIVING ITEMS TO OTHERS	10 HRS X DUTY
02/27/2000	0704	2	3F	SELLING, LOANING, OR GIVING ITEMS TO OTHERS	4 HRS X DUTY
7/11/2000	0022	1	2H	USE OF THREATENING LANGUAGE OR DEATH THREATENING	10 DAYS OR 30 DAYS LOT
12/00/2000	41001	2	3A	FLAUNT OF REGULATIONS/PHYSICAL CONTACT	10 HRS X DUTY
12/10/2000	41000	3	3N	VIOLATION OF REGULATIONS	20 HRS X DUTY
12/11/2000	4007	3	3N	VIOLATION OF REGULATIONS	10 HRS X DUTY
10/22/2000	4700	1	3F	SELLING, LOANING, OR GIVING ITEMS TO OTHERS	VERBAL REPRIMAND
2/14/2001	4940	2	3N	VIOLATION OF REGULATIONS	10 HRS X DUTY
01/07/2001	4300	3	3N	VIOLATION OF REGULATIONS	VERBAL REPRIMAND
2/11/2001	4114	4	3N	VIOLATION OF REGULATIONS	VERBAL REPRIMAND
		1	2E	DISOBEDIENCE AN ORDER	10 HRS X DUTY

powered by ORACLE

7-1 251 W-1

From: Houston, Bob
Sent: Sunday, March 03, 2013 8:26 AM
To: Kohl, Randy
Subject: Re: Fw: Mr. Nikko Jenkins, #59478

No worry, Randy, the meeting is still scheduled.

Sent from my Samsung Galaxy Tab 10.1
 "Kohl, Randy" <Randy.Kohl@nebraska.gov> wrote:
 I provided James an answer to number one. What would like to do with number two?

Connected by DROID on Verizon Wireless

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

From: James Davis <jdavis@leg.ne.gov>
To: "Kohl, Randy" <Randy.Kohl@nebraska.gov>
Cc: Cynthia Grandberry <cgrandberry@leg.ne.gov>, "Houston, Bob" <Bob.Houston@nebraska.gov>, "Moreland, Jerall" <jmoreland@leg.ne.gov>, "Hopkins, Frank" <Frank.Hopkins@nebraska.gov>, "White, Cameron" <Cameron.White@nebraska.gov>
Sent: Fri, Mar 1, 2013 23:08:04 GMT+00:00
Subject: Re: Mr. Nikko Jenkins, #59478

Thanks for the response. Several clarification questions:

1. Will Dr. Wellage be meeting with Mr. Jenkins next week as well?
2. For your information, the scheduled yard meeting for Monday has been postponed so the status summary would not be possible at this time. If you would like to still plan to provide the summary on Monday please let me know.

James

Respectfully,

James Davis III

JAMES DAVIS III,
 Deputy Ombudsman for Corrections
 STATE OF NEBRASKA
 OFFICE OF THE PUBLIC COUNSEL/
 State Capitol Building, P.O. Box 94604
 Lincoln, Nebraska 68509-4604
 Office 402-471-4195
 Fax: 402-471-4277

Toll Free 800-742-7690
jdavis@leg.ne.gov

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On Fri, Mar 1, 2013 at 3:51 PM, Kohl, Randy <Randy.Kohl@nebraska.gov> wrote:

James, arrangements have been made for a social worker to see Mr. Jenkins next week. He will also meet again with Dr. Weilage.

We intend to provide you a status summary for Mr. Jenkins at the beginning of the Scheduled Yards Meeting at 10:00 a.m. on Monday, March 4.

Randy T. Kohl, MD

Deputy Director, Health Services

Nebraska Dept of Correctional Services

From: James Davis [<mailto:jdavis@leg.ne.gov>]

Sent: Monday, February 25, 2013 3:15 PM

To: Kohl, Randy

Cc: Cynthia Grandberry; Houston, Bob; Moreland, Jerall; Hopkins, Frank

Subject: Mr. Nikko Jenkins, #59478

<

From: Houston, Bob
Sent: Saturday, March 02, 2013 8:26 AM
To: Hopkins, Frank
Subject: Re: Fw: Mr. Nikko Jenkins, #59478

Frank,

The Ombudsman's Office in all likelihood will not be here but we should go ahead and meet to continue our progress. We can have them out in a few weeks for a final meeting.

Thanks

Sent from my Samsung Galaxy Tab 10.1

"Hopkins, Frank" <Frank.Hopkins@nebraska.gov> wrote:
 Bob, has the Monday meeting with Ombudsman staff been postponed?

Sent via DroidX2 on Verizon Wireless™

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

From: James Davis <jdavis@leg.ne.gov>
To: "Kohl, Randy" <Randy.Kohl@nebraska.gov>
Cc: Cynthia Grandberry <cgrandberry@leg.ne.gov>, "Houston, Bob" <Bob.Houston@nebraska.gov>, "Moreland, Jerall" <jmoreland@leg.ne.gov>, "Hopkins, Frank" <Frank.Hopkins@nebraska.gov>, "White, Cameron" <Cameron.White@nebraska.gov>
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Sent: Monday, February 25, 2013 3:15 PM

To: Kohl, Randy

Cc: Cynthia Grandberry; Houston, Bob; Moreland, Jerral; Hopkins, Frank

Subject: Mr. Nikko Jenkins, #59478

<

MEETING

1-2922

ATTENDEES: Gerry, Joe, Governor, Larry Bare, Robert Bell, Bob Houston, Doug Hanson, Hank Robinson, Levon H.

AGENDA: Double Bunking Existing Facilities 125% = 4094
 • Parole Board 600

15 – TSCI
 35 – WEC
 89 – OCC

• House Arrest

• County Jails (13.7 m @ yr) 500

• RFP – Half-way houses

Per Diem	11,076.294 / 4645 =	\$2,385
Medical	20,158.467 /	<u>\$4,340</u>
		\$6,725

Est FY 13 Per Diem

• WEC to 170

Per Diem	\$2,360
Medical	<u>\$4,094</u>
	\$6,454

FY 12

• Airpark 150-200

PAROL BOARD

What we want.

Inmates 60 days within PED and beyond are considered at Public Hearing only.
 Replaces reviews

Parole inmates closer to PED or on PED whenever possible

Parole – extend length on parole

What we will do.

CM to DEC

Abbreviate DEC process to 10 work days.

Class studies done on short time.

MEETING

1-2922

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What we will do.

CM to DEC

Abbreviate DEC process to 10 work days.

Class studies done on short time.

1-2705

Hanson, Doug

From: Kroeger, Concha
Sent: Monday, March 29, 2010 2:28 PM
To: Smith, Dawn Renee; Hanson, Doug; Splndler, Robin; Bell, Robert; Wilcox, Joe; Wayne, Larry
Cc: Houston, Bob; Bare, Larry; Farritor, Katina; Young, Konda
Subject: Meeting w/Mr. Larry Bare RE: DCS Inmate Population, April 16, 2pm, downtown

Hi all~

Director Houston has set a meeting up for you and him to meet with Mr. Larry Bare-Governor's Office **RE:** The DCS Inmate Population, at Mr. Bare's office, 2:00 pm, on Friday, April 16, 2010.

Your attendance in this meeting will be very beneficial and very much appreciated.

If you have questions, please contact the Director any time.

Thanks
Concha

Concha Kroeger
Administrative Assistant to the Director
NE Department of Correctional Services
P. O. Box 94661
Lincoln, NE 68509
Phone: 402-479-5903
Fax: 402-479-5623
E-Mail: concha.kroeger@nebraska.gov

3/29/2010

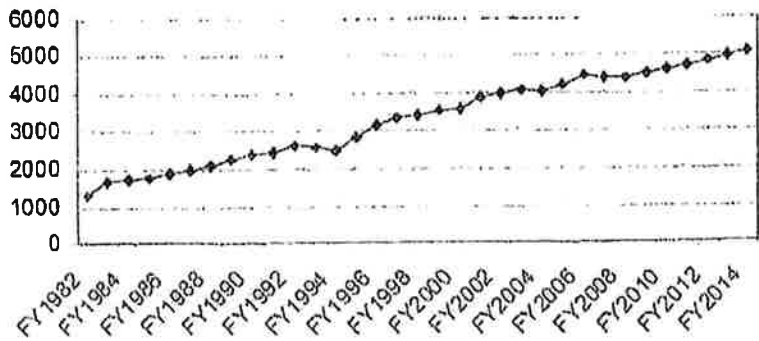
1-2708

Nebraska Department of Correctional Services
Robert P. Houston, Director
September 28, 2009

Capacity Issues

Over the last three decades, the Department has averaged an annual growth rate of 116 inmates per year. The chart on the right identifies actual population through 2009 and projections through 2014 should this trend continue.

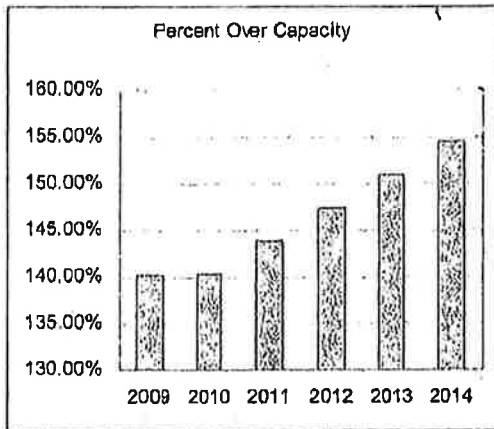
Nebraska Department of Correctional Services
 Fiscal Year 1982 - 2009 Populations
 Projections To FY2014



External Factors

- LB 63 – change provisions and penalties relating to assault, firearms and other weapons, graffiti, gang affiliation, juveniles, bail, jailhouse informers, appeals, violence prevention, prisoner employment, and dating violence policies
- Sex Offenders – Currently the NDCS houses approximately 1,000, or nearly one quarter, of the total population. Total bed capacity for in-patient sex offender treatment is 52; total capacity for outpatient treatment is 54. Currently, 17 sex offenders, or two (2) percent of the total, are on parole.
- Additional legislation which would enhance penalties (i.e., mandatory minimums)

Implications & Solutions



Year	Population	Percent Over Capacity	Placement of Additional 116 Inmates
2009	4451	140.19%	
2010	4597*	140.37%	100 at WEC (200%)** 16 at OCC (173%)**
2011	4713*	143.90%	104 at OCC (199%)** 12 at NSP (151%)**
Maximum/Medium Security Units Become More Crowded			
2012	4829*	147.45%	116 at NSP (167%)**
2013	4945*	150.99%	116 at NSP (183%)**
2014	5061*	154.53%	93 at NSP (196%)** 23 at TSCI (100%)**

* Includes 100 rated capacity beds
 ** Percent of that facility's design-capacity

NOTE: TSCI was built as a "double bunk" facility

Factors which may cause a downturn in population

- Correctional Industries decrease idleness within facilities and promote success upon parole/discharge. Industries provide vocational training at no additional cost to decrease recidivism.
- Community Corrections Council increases day reporting capacity and gives up WEC 100 beds, thereby adding 100 beds. This pushes the adding of Maximum/Medium beds to 2012.
- Maintaining a larger capacity within community centers and the Work Ethic Camp, increasing the number of inmates prepared for parole
- Placing inmates serving 12 months or less in their communities at no added cost to local governments and expanding the Re-entry Furlough Program (RFP)
- Increasing the numbers of inmates on parole
- Decreasing the number of inmates returned for technical parole violations with "half-way back" options (e.g., electronic monitoring, house arrest, travel plans, etc.)
- Behavioral health programming (mental health, substance abuse, sex offender) to increase successful parole, thereby decreasing recidivism

NDCS Plans to Increase Capacity

- Continue filling lower security units and facilities first.
- Reallocating 32 minimum beds at TSCI to medium/maximum, which does not change total capacity, but aids in placement for the medium/maximum population
- Design – Bid – Construction process
 - Suggest we begin program statement by June 2010 to :
 - Build 250-bed housing unit at CCC-L (minimum custody)
 - Approximate cost - \$16,125,000
 - Build 256-bed housing unit at TSCI (medium/maximum custody)
 - Approximate cost – 28,000,000

Healthcare Issues

Goal

Ensure full compliance with LB 154, providing the community standard of care, while reducing the cost of medical services.

Strategies

- Blue Cross contract effective date October 1, 2009
 - Negotiated a 9% Admin fee; Blue Cross proposed 10%,
 - Projection is \$5 million in claims or \$450,000 in fees; cost avoidance of \$50,000
- Urgent Care Initiative
 - Implemented in Omaha and Lincoln in June 2009
 - Costs for emergent care about 50% less than emergency rooms
- In-Home Dialysis
 - Beginning November 2009 at NSP
 - Will save us hundreds of travel orders and at a lower cost
- Omaha agency nurse initiative results in an annual savings \$132,000
- Terminate a contract for psychiatrist services effective October 1, 2009
 - Savings of \$45,000
- Pharmacy Restructuring Initiative
 - January 2010
 - Reduce number of pharmacists from five (5) to two (2), number of techs from nine (9) to two (2)
 - Lease automated delivery system

Future Considerations

- Position DCS Health Services to:
 - Respond to the aging inmate population
 - Possess the capabilities of documenting evidence-based medicine and best practices

2012-2013 Budget

- Electronic Health Records System Purchase
 - Estimated cost \$2 million, with \$200,000 in annual operating fees
 - We plan to propose after showing effective implementation of the above initiatives

1-2726

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: Nemecek, Connie <Connie.Nemecek@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 have 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 to 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 overwork 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

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STATE OF NEBRASKA

COPY

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	Beg. 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 Per Bed</u>	<u>Total Area</u>	<u>Project Cost 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.

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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 the 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

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 |

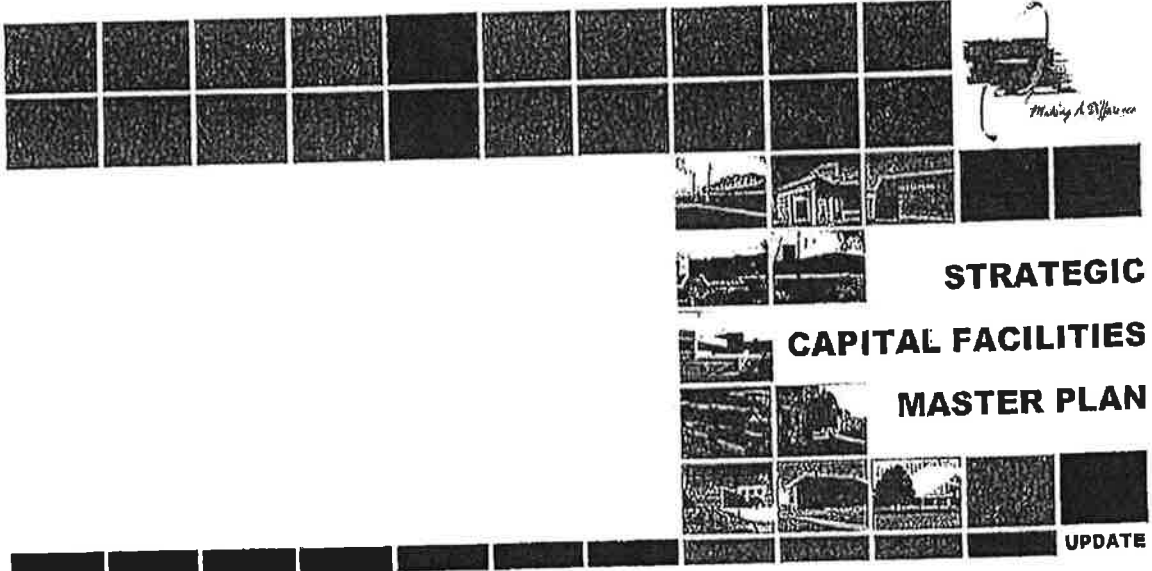
Once again, I want to reiterate facility and staffing costs are "ballpark" project cost estimates. In the event any project would move forward, a full program statement with architectural space plan is required.

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 Nemec
Layne Gissler
Larry Wayne
File



**STRATEGIC
CAPITAL FACILITIES
MASTER PLAN**

UPDATE

DRAFT FINAL REPORT

DRAFT

PREPARED FOR THE

State of Nebraska
Department of Correctional Services
Executive Steering Council

JULY 2008

This report was supported in part by Award No. 1996-CV-VX-003, awarded by the Corrections Program Office, Office of Justice Programs to the State of Nebraska Department of Correctional Services. The funding does not constitute official recognition or endorsement of any project by the Department of Justice. The opinions, findings, and conclusions or recommendations expressed in this report are those of Carter Goble Lee and do not necessarily reflect the views of the Department of Justice.



Carter Goble Lee
IN ASSOCIATION WITH DLR Group

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State of Nebraska
Department of Correctional Services

STRATEGIC CAPITAL FACILITIES MASTER PLAN UPDATE

Introduction

This study is an update to the 1997 Master Plan for the Nebraska Department of Correctional Services (NDCS) and was prompted by the need to revisit and update the answer to two questions:

1. Is there a need for additional high security beds for violent offenders, and
2. Is there a need for additional minimum or community level beds to free up high security beds for violent offenders?

This study not only answers these two questions, but also provides strategic options for meeting any future bedspace needs for the current rise in substance abusers, as well as violent offenders in the system.

The 1997 Master Plan found a significant need for additional high security beds in the system. The construction of the Tecumseh State Correctional Institution (TSCI) was one of the results of that study. Two "watershed" events occurred in the intervening years that have resulted in system changes, and that will guide the development of a plan to manage the growth in this new updated 2005 Master Plan:

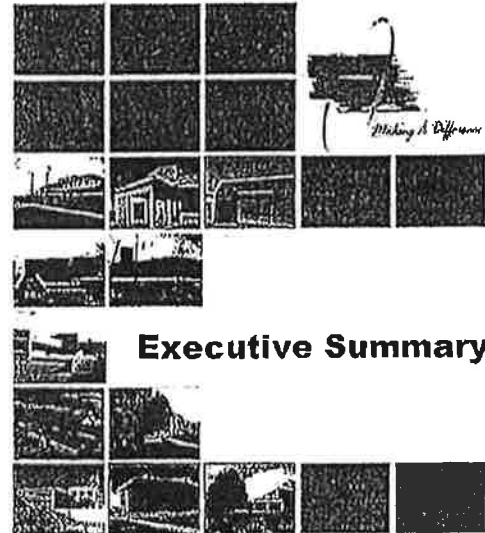
1. The implementation of a new classification system that yields the need for more minimum custody bedspaces; and
2. The passage of legislation that significantly increases the incarceration sanctions for individuals involved in the manufacturing and/or sale of methamphetamine.

While the first "event" has an impact on how inmates are housed and programmed, the change in the method of classifying inmates does not result in additional population. This change is anticipated to actually "push down" inmates into lower classification levels, reducing the current need for high-security beds. However, the full implementation of new legislation has the potential of altering the number of persons incarcerated more than any other single piece of legislation passed by the Legislature, and possibly of increasing the need for beds. A more careful examination will be needed to reveal if these additional individuals will be violent, and if additional high-security beds will be necessary.

Similar to many plans, this 2006 Update began as public policy was being adjusted due to emerging trends in the Nebraska society. In particular, the noticeable increase in admissions for individuals charged with the abuse or sale of methamphetamines prompted new legislative actions that could, over time, significantly impact the number of prisoners in the system. While the precise implications are difficult to calculate, what is certain is the need for new forms of treatment and incarceration for offenders with addiction to this insidious substance.

Modeling the potential impact of new legislation regarding the abuse of methamphetamines, as noted, was complicated as a number of assumptions had to be made to predict the possible behavior of the judicial system in charging and sentencing abusers. The conclusion of the study was delayed six months while data was accumulated on admissions for inmates charged under the new legislation. While the data did indicate an increase in the number of persons serving sentences as a result of the legislation, additional time will be required to more analytically establish the impact of the legislation.

Regardless of the impact of this new legislation, and other legislative measures that will occur over time, Nebraska will experience continued growth in prisoners that have serious issues associated with the abuse and sale of illegal chemical



Executive Summary



substances that requires a treatment-based response. This 2006 Update addresses the "natural" and potential "accelerated" growth that will occur in the context of traditional and treatment bed needs. As with any strategic plan, periodic updates will be necessary to determine if the prediction models are reflecting the actual system performance.

Needs Assessment and Forecasts

Due to the potential major implications of the new sentencing legislation, the discussion of growth management scenarios has been examined within a range of low and high estimated growth. First, a plan has been examined in terms of "Natural Growth," which is the estimated population in the system for years 2015 and 2025 without the potential impact of any new legislation. In other words, this option offers a strategy to address a combination of existing facility modifications and new facility initiatives to meet the shortfall in beds that will result from the normal growth in the system. This model is the "low" end of the range of possible growth scenarios. The second growth model examines the potential additional inmate population expected to be generated by new sentencing legislation associated with methamphetamine offenders in 2015 and 2025. This scenario outlines strategies to address the "Accelerated Growth" that legislation is expected to produce, and establishes the "high" end of the range of possible growth. Because the new legislation does not relate to violent offenders, but rather to drug manufacturers, the anticipated future number of violent offenders is expected to be the same under both models.

By approaching a Master Plan Update through examination of the "Natural" and "Accelerated" scenarios, a plan can be more clearly delineated as to what would be expected to happen with and without the potential effects of new laws, leading to a definition of the required actions and costs to meet each growth scenario. Examining both growth options provides flexibility of planning, in offering the NDCS a wider range of options to deal with either scenario, or the possible combination of both.

In 1997, a system-wide Master Plan Update was completed that determined on January 14, 1997, the design capacity of the State correctional system was 2,103 beds and the inmate census was 3,214, indicating that the system was operating at approximately 142% of design capacity. In the 1997 Master Plan, the inmate population forecast was 4,419 beds by the year 2000 and 6,033 beds by the year 2005. While the projected need for 6,033 has not occurred, the 1997 Master Plan would have raised the available capacity to a total of 4,316 bedspaces which was close to the in-house total census in May 2006 (4,420).

The list of recommended capital projects in the 1997 Master Plan Update included:

- 128-Bed Addition at DEC
- New 800-Bed Prison – operated at 1,000
- Renovation of 150 Beds at Rivendale – operated at 188
- One New 100-Bed Work Ethic Camp – operated at 125

In addition to increasing the number of new bedspaces for high-security and violent offenders (largely through the construction of the Tecumseh State Correctional Institution), a major system initiative was undertaken to evaluate and revise the classification system. A concurrent study by the Criminal Justice Institute recommended changes in classifications, which are anticipated to classify more inmates to a custody level lower than the level rewarded through the previous classification methodology. While this impact is not universal, the initial implementation assured inmates they would not be "classified up" as the new system is put in place. The implementation of this new classification system is expected to reduce the number of high-security inmates currently in the system by classing some inmates down (but none up), but later stabilizing as new inmates are received and classified under the new system.

The first step in this Master Plan Update was to validate the forecast of future inmates in the DCS through the year 2025. Average daily population (ADP) is the result of how many inmates come into the system (admissions, or ADM) and how

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State of Nebraska
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STRATEGIC CAPITAL FACILITIES MASTER PLAN UPDATE

Executive Summary

long they stay (average length of stay, or ALOS). Historical admissions and length of stay data were analyzed to help forecast future ADP as accurately as possible. Once the total number of inmates was validated, the future ADP was divided into the various security levels and population groupings. Particular attention was paid to violent Part I offenders coming into the system.

Admissions

Prison admissions have increased at a rate faster than the increase in State population over the past 20 years, with the admissions rate to prison increasing from 0.85 in 1990 to 1.12 in 2003. System admissions are projected to continue at the historical rate, with slight annual increase relative to state population. Of those admissions, violent Part I admissions have been in the mid to high-200's for the past five years. These offenders accumulate in the system, as each year's admissions stay longer than one year. In 2000, a total of 1,307 violent Part I individuals were in the system at one time or another. This estimated violent average daily population in 2004 had reached 1,480 – a cumulative increase of approximately 44 inmates per year.

Although this rate of increase is not likely to continue at that rate into the future, an increase of even five violent Part I inmates per year will result in a total ADP of close to 1,600 violent offenders by the year 2025. With the population of the State of Nebraska projected to increase to 1,802,083 by the year 2025, and prison admissions forecasted to reach approximately 2,900 in the same year (see forecast numbers in Chapter 1 for details), if violent offenders continue to constitute between 13% and 14% of all admissions¹, between 380 and 400 inmates admitted to the system in 2025 are likely to be violent Part I offenders. With an average length of stay of 5.36 years (the historical ALOS for the years 2000 to 2004 for violent Part I offenders), the average daily population of violent offenders could pass 2,000 by 2025. At this point, violent offenders may comprise more than 30% of the inmate population. (See ADP Forecast below.)

Admissions and ADP Forecasts – Natural and Accelerated Growth

An analysis of historical admissions (ADM) and average daily population data (ADP) revealed the average length of stay (ALOS) for each sentence cohort. The ALOS for the past five years for each cohort was applied to the forecasted admissions in order to calculate future average daily population under the Natural Growth model. For the Accelerated Growth model, 15% (taken from 2004 actual admissions) of the 1-5 year sentence cohort were shifted to the 20+ year cohort, to model the anticipated effects of new drug sentencing legislation. A total of 23 individuals from the 1-5 year sentence cohort were also shifted to the Life cohort, for drug/weapons sentences. Historical ALOS were applied to these new adjusted admissions to create an estimate of Accelerated Growth.

The Accelerated Growth Model models the possible effect of legislative changes on the average length of stay in the Nebraska Department of Corrections. Despite the name, Accelerated Growth, this model is a moderate one, because the assumption of policy changes that only increase the length of stay² is the basis for the model.

According to the Natural Growth forecast, by the year 2025 the Department of

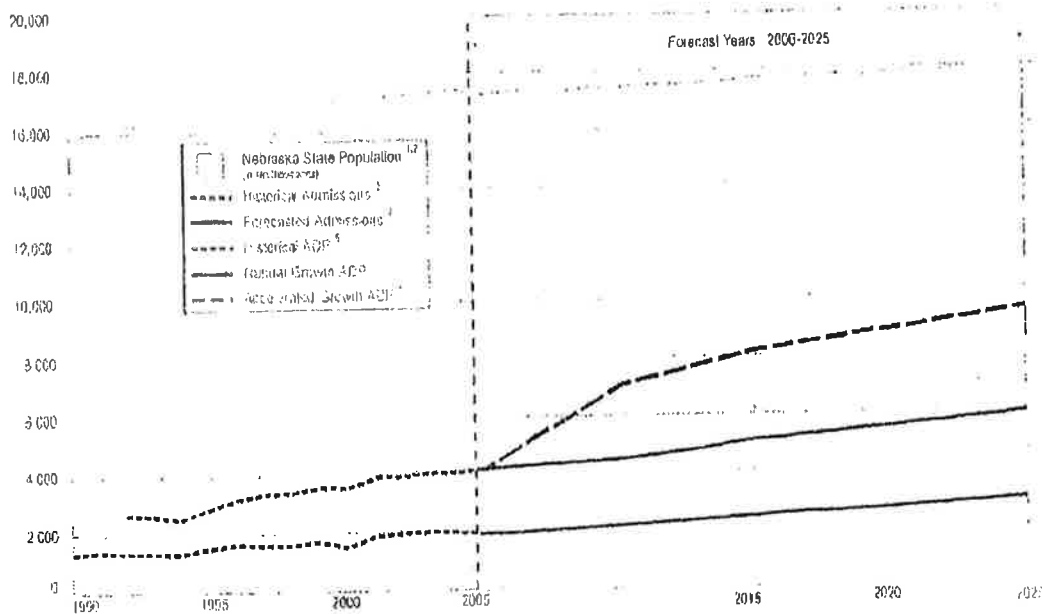
¹ The percentage of total prison admissions that were Part I Violent offenders was 12.99% in 2000, 14.93% in 2001, and 13.52% in 2003.
² Reduced use of parole and stiffer penalties for certain crimes, among others, are examples of policy changes that result in increased lengths of stay.



Correctional Services will be housing approximately 5,900 inmates, if growth continues as in the past, with no significant changes in average length of stay or rate of increase of admissions. Under the Accelerated Growth forecast, as many as 9,552 inmates could be incarcerated within the NDCS by the year 2025 – approximately 3,500 more than were forecasted using the Natural Growth Model, and approximately 4,720 more than are housed in the current system. The Natural Growth and Accelerated Growth models will be used as the minimum and maximum (respectively) capacity levels that define the planning range for the NDCS.

Figure ES.1 shows the forecasted population of the State of Nebraska, along with forecasted admissions and ADP under the Natural and Accelerated Growth models.

Figure ES.1: Summary of Forecasts



Source: Carter Goble Lee, September 2005

- ¹ Historical Population taken from U.S. Census Bureau.
- ² Forecasted State Population taken from the U.S. Census Bureau at <http://www.census.gov/population/www/projections/projectionsagesex.html>
- ³ Historical Admissions from the Nebraska Department of Correctional Services
- ⁴ Projected future admissions calculated by Carter Goble Lee
- ⁵ Historical ADP from the Nebraska Department of Correctional Services
- ⁶ Natural and Accelerated Growth ADP forecasts calculated by Carter Goble Lee

Population Groups of Interest

Two types of terminology are used to distinguish the various sub-groups that exist within the population held by the Department of Correctional Services. The first terminology refers to the inmate's custody level, or security level. Custody levels are used to match an inmate with a facility type, and include Maximum, Maximum-Segregation, Medium, Minimum, and Community. The second terminology refers to qualities the inmate possesses that may qualify him or her for special



housing. These "Population Groupings" include female, youth (under age 19 at conviction, tried as an adult), severe medical impairment (permanent), or a need for special programming with associated housing stipulations (e.g. Inpatient substance abuse treatment). Some population groupings, such as gender, are permanent. Others, such as age or treatment-based criteria, are temporary, although they may not change for years.

Within the DCS, each prison has a set of custody levels and population groupings that define its general population. This facility profile can be based on either custody level ("custody based") or population grouping ("population based"). If the general population is based on custody level(s), the facility must be equipped to accommodate the various population groupings that may occur within those custody levels. Likewise, if a facility's general population is based on a population grouping, then the facility must be equipped to handle all possible custody levels within that population grouping. With the NDCS there are both Custody Based and Population Grouping Based facilities.

NDCS "Custody-Based" Facilities

- Community Corrections Center – Lincoln (CCC-L), Community
- Community Corrections Center – Omaha (CCC-O), Community
- Lincoln Correctional Center (LCC), Maximum/Medium
- Nebraska State Penitentiary (NSP), Maximum/Medium/Minimum
- Omaha Correctional Center (OCC), "Soft" Medium/Minimum
- Tecumseh State Correctional Institution (TSCI), Maximum (Segregation)/Maximum/Medium

NDCS "Population Grouping-Based" Facilities

- Nebraska Correctional Center for Women (NCCW), Female
- Nebraska Corrections Youth Facility (NCYF), Youth
- Diagnostic and Evaluation Center (DEC), Intake

Note: The Work Ethic Camp (WEC) in McCook is not included in NDCS capacities or projections in the Master Plan Update. This facility is owned and operated by NDCS on a contracted basis for the Intensive Supervision Program of the Probation Department. Residents of the WEC are not prison inmates, rather they are county-sentenced individuals serving Probation, and therefore not included in the prison system "count".

An analysis of the beds by population grouping and custody level was compared with the ADP forecast, disaggregated by population grouping and custody level. This analysis revealed several pockets of population that may require, or benefit from, special housing in the future. These population groupings will be discussed throughout the report, and the plan for future expansion will address strategies to meet the needs of these inmates within the DCS system. This exercise helped to identify not only housing needs, but also program and infrastructure needs.

- Medically Limited
- Female (youthful, intake, community)
- Medium and Maximum Custody Male Inpatient Substance Abuse Treatment
- Pre-Release – all custody levels but community
- Meth Offenders
- General Population – minimum, community

This study and the potential changes in the inmate profile within the NDCS offers a unique opportunity for the State to devise an appropriate strategy for dealing with the anticipated increase in several population groups, including methamphetamine offenders within the system. An increased length of stay for these offenders will significantly increase the ADP in the prison system, unless that increased stay is coupled with other initiatives that provide for a matching reduction in length of stay. One possibility, which is appropriate for this treatment-needy population, is the potential for split sentences. This split-sentence solution can also be implemented in conjunction with a locally managed community corrections option, such as electronic monitoring coupled with parole supervision and treatment, where the inmate serves a large portion of his or her sentence through monitoring. Either way, the change in inmate profile and the need for additional low-custody beds combine to offer a unique opportunity to deal with addicted offenders in a proactive manner that may help stop the cycle of addiction and keep some offenders from returning to the criminal justice system after release.

Introduction to System and Facilities

Existing Facility Capacities

Review of existing facility drawings, on-site tours, and interviews at each facility were used to document existing conditions in the current system of NDCS facilities. The NDCS 2004 Survey of Physical Plant was used as a resource. As part of this effort, inmate population capacities for each facility were evaluated for each of the following capacity definitions:

Design Capacity	Based upon original design and construction documents, the total number of beds the facility was intended and designed to accommodate. This capacity is set at the time of construction and is only modified by capacity changes resulting from building additions, reductions, or revisions.
Stress Capacity	A term from the 1997 Master Plan Update that provides a reference point, based on the assumption that the NDCS system as a whole could operate at approximately 125% of design capacity without major physical changes or inordinate public safety risk. "Stress Capacity" is included in this capacity summary only as a reference point to show relative overcrowding/stress in the system today.
July 22, 2005 Population	Distribution of actual system headcount by facility for a recent date, showing that on that day the system was operating at 130% of design capacity.
2005 CGL Operational Capacity	Rated bed capacity, according to American Correctional Association (ACA) Standards is considered to be the original design capacity, plus or minus capacity changes resulting from building additions, reductions, or revisions. However, the scope of work for this Master Plan Update called for an independent assessment of what an appropriate rated capacity should be. This assessment was performed in the context that a major stated policy of NDCS is achieving and maintaining ACA Accreditation for all its facilities.
	The evaluation of each existing housing unit in the system was based upon a review of the applicable ACA Standards for physical plant elements by measuring each housing unit for sleeping and dayroom areas, as well as the number of plumbing facilities and then making a judgment about what the highest capacity level could be that, with all things considered in the facility, would still allow ACA Accreditation to be maintained. The 2005 CGL Operational Capacity is used as the baseline for planning and shortfall analysis.
	A complete compilation of evaluation data used to develop the 2005 CGL suggested operational capacity is included as a supplemental Appendix for each facility by housing unit.
Proposed Tentative Operational Capacity	Based upon discussions with each facility, this is the total general population headcount that can be accommodated long-term without major capital project initiatives. In a sense, this represents the "tip point" capacity, above which additional housing, administration, program, and support space projects tailored to each facility would be required. This is an essential determination, which indicates at what point major capital project initiatives would be required at a facility in order to increase capacity.



A summary of the resulting capacity determinations by facility is shown in Table ES.1. Looking at the capacity summary provided in this table, the looming challenge for NDCS is readily apparent by understanding that the July 22, 2005, actual in-house inmate population was 4,135 – which is 130% of current design capacity, and 112% of the 2005 CGL Operational Capacity. Clearly, capacity expansion initiatives are needed as soon as possible to maintain safe and humane conditions within the system, given the fact that legislation exists to permit declaration of an emergency situation when the inmate population reaches 140% of design capacity.

Housing

Using the 2005 CGL Operational Capacity, the nine facilities³ represent a total of 3,704 beds. A wide variety of housing options within the facilities for all custody levels and population groupings are available. At the same time, pockets of need are hidden within ample general population groups. In-patient substance abuse treatment is available for minimum and maximum custody inmates, but not for those classified as medium custody. Since medium custody inmates comprise the majority (26.1% female, 34.4% male, 33.6% total) of inmates in the system, a large proportion of inmates in the NDCS system do not have access to inpatient treatment.

Table ES.1: Existing Facility Capacities

Facility	Capacity	Design Capacity	Capacity			
CCCL	200	200	= 125% of design capacity	291	250	250
CCCO	90	90		136	135	135
DEC	160	160		288	208	232
HCC*	152	--		--	--	--
LCC	308	308		480	430	465
NCCW	139	275		303	267	291
NCTC**	90	--		--	--	--
NCYF	--	78		83	81	93
NSP	568	718		1,148	818	1,038
OCC	398	398		573	555	635
TSCI	--	960	833	960	960	
TOTAL	2,108	3,183	3,979			

Source: Carter Goble Lee; August 2005

Includes general population counts only; excludes short-term segregation and infirmary beds

* Hastings Correctional Center closed in July 2005

** Physically relocated to NSP

Table ES.2 summarizes the bedspace shortfall under both the Natural Growth and the Accelerated Growth models, for 2015 and 2025. As this table demonstrates, even under the Natural Growth model, by 2015 an approximate shortfall of 1,153 beds for males (youth and adult), and 233 beds for females (youth and adult) will exist. Under the Accelerated Growth model a need for 4,125 male beds and 321 female beds by 2015 could exist.

Table ES 2: Summary of Shortfall – Natural Growth and Accelerated Growth Models

	2005 CGL Oper. Capacity	2015				2025			
		Natural Growth		Accelerated Growth		Natural Growth		Accelerated	
		# Of Inmates	Shortfall	# Of Inmates	Shortfall	# Of Inmates	Shortfall	# Of Inmates	Shortfall
Total - Adult Male	3,283	4,307	(1,024)	7,274	(3,991)	5,006	(1,723)	8,490	(5,207)
Total - Youth Male	81	210	(129)	215	(134)	252	(171)	259	(178)
GRAND TOTAL - MALE	3,364	4,517	(1,153)	7,489	(4,125)	5,258	(1,894)	8,749	(5,385)
Total - Adult Female	340	565	(225)	653	(313)	666	(326)	770	(430)
Total - Youth Female	-	8	(8)	8	(8)	9	(9)	9	(9)
GRAND TOTAL - FEMALE	340	573	(233)	661	(321)	675	(335)	779	(439)
GRAND TOTAL - ALL BEDS	3,704	5,090	(1,386)	8,150	(4,446)	5,933	(2,229)	9,528	(6,824)

Source: Carter Goble Lee; September 2005

³ The Work Ethic Camp (WEC) is not included in discussion of prison system facility capacities or projections since it is a facility for Probationers, rather than NDCS inmates.



Core Facilities

Overall, the physical condition and maintenance of existing NDCS facilities is remarkably good, especially in comparison to the typical condition and level of deferred maintenance found in other state correctional systems. The huge challenge facing the system, however, is to add sufficient capacity to accommodate a looming increase in inmate population. To the extent possible, opportunities for expansion at existing facilities is incorporated in the proposed expansion plan.

Programs

There are wide program and treatment opportunities for inmates at CCC-O, CCC-L, and NSP. Fewer opportunities are available at LCC, OCC and NCCW; even fewer for inmates at TSCI, despite the state-of-the-art laundry program and specially designed in-patient substance abuse unit. One of the overriding goals throughout DCS should be to provide consistency of opportunities at all custody levels, for each population grouping, including high-security violent offenders who are able to participate.

In terms of industry, Cornhusker State Industries (CSI*) has recognized that in order to have success in placing an industry within a program, matching the labor pool with the service in question is essential. Nebraska is already ahead of many other states, with close to 15% of all inmates employed. According to CSI staff, 17-20% employment is a realistic goal, and one that could be achieved by deepening existing partnerships and developing new leads. CSI provides four primary benefits:

1. An opportunity for inmates to learn skills, ethics, and work disciplines that transfer to the private sector, providing an opportunity to support themselves and their families;
2. Providing taxpayer benefits by supplying quality goods and services to non-profit and tax-based entities at attractive prices;
3. Improving the safety and security of the institutions; and
4. Providing the private sector a unique labor pool in Nebraska's tight labor market.

Some specific goals of CSI within the DCS are the following:

- Provide CSI programs outside the walls, to permit partnerships with firms unwilling or unable to transport raw materials inside the walls.
- Increase work opportunities which provide jobs that are unique to different populations in order to achieve some degree of separation.
- Increase the percentage of inmates involved in some type of job within the walls.
- Provide work opportunities that teach life and job skills that can be used after release, so that the industry serves as a training ground as well as a source of income.
- Develop new ideas – commissary, fast food restaurant, etc.

It is critical from both a cost and benefit perspective that CSI be included in any discussions and planning regarding future expansions or projects that may impact the industries programs. Expansion of the total number of inmates held in the DCS will offer opportunities and challenges; CSI will require the appropriate program space to provide the necessary programs for the anticipated increase in inmates, but will also have a large and diverse workforce to employ in new partnerships. Since increasing numbers of the population will be violent offenders as these inmates with longer sentences continue to accumulate in the system, some work opportunities must be geared to small groups of independent workers, in industries that do not use certain tools.

A recent study estimated that approximately 85% of DCS inmates could benefit from substance abuse treatment. A clear need exists for increased treatment options, particularly as the anticipated increase in population is expected to include



significant numbers of methamphetamine offenders. Any facility expansion should take into account strategies to improve the range of treatment options (education, outpatient treatment, inpatient treatment) for inmates, so that the time spent in custody can be used productively to reduce the risk of re-offense after release. The DCS should offer parallel services for men and women, and should follow the Initial Plan and assessment of need with the recommended treatment in every case.

Psychiatric care also varies widely. Presently, no stabilization unit exists within the system for mentally ill inmates who decompensate; isolation or segregation is the only option for inmates who require observation, medication, and counseling. While the numbers are relatively small, these inmates can be disruptive and violent, and could harm themselves, other inmates, or staff. A long-term plan for this system should include strategies to deal with mentally ill inmates, either on a facility-specific basis or on a system-wide basis.

Strategy for Meeting Shortfall

Based upon the projections of future growth and the conditions of existing facility resources, the focus shifts to defining the implications of managing the anticipated growth through expanded uses of existing facilities and the development of new bedspaces. The strategies developed in this Master Plan Update represent two planning horizons: Phase 1 – the present year through 2015; and Phase 2 – years 2015 to 2025.

The discussion of physical facility strategies for meeting shortfalls was divided into two categories. First, a plan was examined in terms of "natural growth" – defined in this report as the *minimum* inmate population growth anticipated in the system through the year 2025. The strategy to meet this challenge is developed as the "Natural Growth Plan" (which includes a Phase 1 capacity expansion to the meet *minimum* projected bedspace needs through the year 2015; and a Phase 2 capacity expansion plan to accommodate *minimum* projected system growth between the years 2015 to 2025).

The second plan examines a higher projection of additional inmate population growth that could result through the year 2025 due to the impact of recent changes in legislation. The strategy to meet this potential further challenge to the NDCS system outlines three alternative approaches to address this "accelerated growth" that might occur, and is developed as the "Accelerated Growth Plan". This plan assumes that all recommended system expansion initiatives developed under the Natural Growth Plan (Phases 1 and 2) are implemented; and is calculated based on the potential additional capacity requirements projected in each phase.

As previously mentioned, the number of violent offenders is expected to be the same in either plan, since the new legislation driving the "accelerated growth" model does not affect violent offenders. At the same time, the Accelerated Growth Plan is likely to include higher numbers of methamphetamine offenders, who will demand high levels of services. The number of maximum security inmates is anticipated to increase relative to the overall size of the inmate population, regardless of the growth model.

By approaching a Master Plan Update through examination of the "natural growth" (minimum) and "accelerated growth" (potential) scenarios, a clear delineation can be provided between *what absolutely must be done* and *what may also have to be done* in the future. Another reason to look at these scenarios separately is that somewhat different inmate populations are likely to result with the more typical historical offenders in the "natural growth" scenario, and individuals with significantly more health and treatment requirements in the "accelerated growth" scenario.



Natural Growth – Phase 1 Capital Expansion Strategy

The approach for determining capacity expansion needs for the time period 2005 to 2015 is straightforward:

$$\begin{array}{|c|} \hline 2005 \\ \hline \text{CGL Operational} \\ \hline \text{Capacity} \\ \hline \end{array}
 -
 \begin{array}{|c|} \hline 2015 \\ \hline \text{Natural Growth Inmate} \\ \hline \text{Projection} \\ \hline \end{array}
 =
 \begin{array}{|c|} \hline \text{[Redacted]} \\ \hline \end{array}$$

As presented in Table ES.2, the projected shortfalls for the Natural Growth model indicate that a total of 1,388 additional system beds will be required to accommodate the inmate population increase from 2005 through 2015.

Natural Growth – Phase 1 Projections and Shortfall

	CGL	2015	
		Natural Growth	# of
GRAND TOTAL - MALE	3,364	4,517	(1,153)
GRAND TOTAL - FEMALE	340	573	(233)
GRAND TOTAL - ALL BRDS	3,704	5,090	(1,388)

Phase 1 proposes a capacity expansion of 1,352 new beds (1,322 new beds and 30 "captured" beds through a re-designation of Housing Unit C allocation at LCC) to bring the total NDCS system rated capacity from 3,704 to 5,056 bedspaces by the year 2015. While slightly under the projected natural growth ADP of 5,090 total inmates, this strategy represents the absolute minimum system capacity expansion required by the year 2015. CSI programs should grow commensurate with population expansions.

The recommended capital expansion plan to meet the Natural Growth – Phase 1 needs is shown in Table ES.3.

Table ES.3: Proposed Capacity Expansion for Natural Growth – Phase 1

GROWTH - PHASE 1: 2005-2015																
Facility	Project	INTAKE					MEDIUM SECURITY					OTHER				
		INT	MAX	MED	MIN	CB	INT	MAX	MED	MIN	CB	INT	MAX	MED	MIN	CB
DEC	New High Security Intake Housing (128) ¹	100														
DEC	New Segregation Housing Capacity (64 beds) ²			94												
NCCW	Relocate Reception to DEC ³					28										
NCYF	"Double" Facility Capacity (128 beds)										32	96				
NSP/LCC	New Residential Treatment Facility ⁴				100											
TSCI	New 40-Bed Minimum Security Housing Unit ⁵		32		8											
New Facility Initiatives																
	New Drug Treatment Facility (250) ⁶				225						25					
	New Minimum/Community-Based Facility (612) ⁷				381	73				131	27					
	Total Expansion by Custody Level	100	32	94	714	73	28	0	0	156	27	0	32	96	0	0
	Total Expansion by Population Component	1,013									211				128	
GRAND TOTAL - Natural Growth - Phase 1 Plan																
4,352																

Source: Carter Goble Lee; July 3, 2008

- ¹ Relocation of Female Intake to DEC will take 28 of the new Intake Housing Beds, but also add 28 high security beds at NCCW.
- ² Segregation Capacity will be shared by DEC and LCC; new segregation space will permit recapture of Housing Unit C at 94 medium security beds.
- ³ Construct new Community-Based Facility outside the NSP perimeter.
- ⁴ Construct new Residential Treatment Center in the area of NSP or at available area at LCC site.
- ⁵ Construct new 40-Bed Minimum Security Dormitory Housing Unit outside the TSCI Perimeter; allows reuse of their existing housing for higher security beds.
- ⁶ Construct new 250-Bed Drug Treatment Facility (225-men; 26 women); site to be determined.
- ⁷ Construct new 612-Bed male/female Minimum Security/Community-Based Facility; allows recapture of 73 bedspaces occupied by females at CCCL, CCCC.

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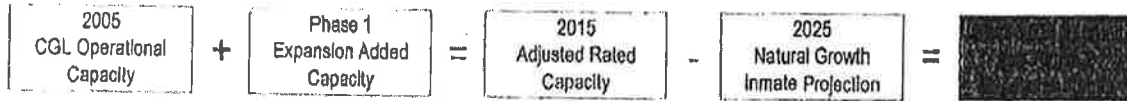
State of Nebraska
Department of Correctional Services

STRATEGIC CAPITAL FACILITIES MASTER PLAN UPDATE

Executive Summary

Natural Growth – Phase 2 Capital Expansion Strategy

Capacity expansion needs for the period 2015-2025 are also straightforward using the following basic approach:



Natural Growth – Phase 2 Projections and Shortfall

	2025		
		Natural Growth	POH
GRAND TOTAL - MALE	4,505	5,258	(753)
GRAND TOTAL - FEMALE	551	978	(424)
	5,056	5,933	(877)

With the implementation of the Phase 1 capacity expansion plan of adding 1,352 beds, the system's rated bed capacity in 2015 would total 5,056. The projected bedspace need of 5,933 reflects that a total of 877 additional system beds will be required by 2025 (Phase 2) to meet the needs identified under the "natural growth" scenario.

The recommended capital expansion plan for Natural Growth – Phase 2 is summarized in Table ES.4. The need for additional high-security beds is met through the addition of one housing unit at TSCI.

Table ES.4: Proposed Capacity Expansion for Natural Growth -- Phase 2

NATURAL GROWTH - PHASE 2: 2015-2025																
Facility	Project	Male					Female					Youth				
		INT	MAX	MED	MIN	CB	INT	MAX	MED	MIN	CB	INT	MAX	MED	MIN	CB
TSCI	Develop New High Security Housing Building ¹	256														
DEC	Increase Double-Bunking (64 beds)			64												
NCCW	Develop New Minimum Security Housing (120 beds)								120							
NCYF	Increase Double-Bunking (32 beds)													32		
LCC	Expand Male Community-Based Facility from Phase 1 ²					150										
Facility Infill (Total)						256								32		
New Male Minimum Security Facility (256)						256										
Total Expansion by Custody Level		0	256	64	256	150	0	0	0	120	0	0	0	32	0	0
Total Expansion by Population Component						728				120				32		0
																878

Source: Carter Goble Lee; July 3, 2006

¹ Space for one additional housing building exists within the TSCI perimeter.

² Total capacity would rise from 100 beds to 250 beds.

Summary of the Natural Growth Plan

The proposed physical capacity expansion in Phase 1 of 1,352 beds by 2015 is targeted to accommodate the majority of the expected growth of 1,386 inmates by that point in time. Continuing into the future, physical expansion of another 878 beds is proposed in Phase 2 to accommodate natural system expansion for the year 2025. The plan has also been crafted to reflect the projected required capacity distribution by gender, age, and custody level. Moreover, the plan incorporates every feasible opportunity identified for expansion of existing facilities.

The 20-year expansion plan would add 2,230 new bedspaces to the system through a combination of expansion of existing facilities through additions or simply double-bunking where designated. The proposed three new stand-alone

facilities would be dedicated to meeting the projected increase in minimum custody inmates as a result of the new classification system. Such a plan permits existing high custody bedspaces to be used for their original purpose of accommodating violent and disruptive offenders.

Table ES.5 summarizes the results of full implementation of the Natural Growth Plan, Phases 1 and 2.

Table ES.5: Summary of the Natural Growth Strategy Plan

	2005	Expansion				2025		Phase 2 Expansion	
	CGL Operation Capacity	# Of				Natural Growth # Of Inmates	Shortfall ¹	Capacity Added	Resulting Rated Capacity
Total - Adult Male	3,283	4,307	(1,024)	1,013	4,296	5,006	(710)	726	5,022
Total - Youth Male	81	210	(129)	128	209	252	(43)	32	241
GRAND TOTAL - MALE	3,364	4,517	(1,153)	1,141	4,505	5,258	(753)	758	5,263
Total - Adult Female	340	555	(225)	211	551	666	(116)	120	671
Total - Youth Female	-	8	(8)	-	-	9	(9)	-	-
GRAND TOTAL - FEMALE	340	573	(233)	211	551	675	(124)	120	671
	3,704	5,090	(1,386)	1,352	5,056	5,933	(877)	878	

Source: Carter Goble Lee; July 3, 2006

¹ Shortfall for years 2015-2025 based on the natural growth model AFTER completion of the proposed Phase 1 expansion plan

Managing "Accelerated Growth"

The strategy outlined in response to the projected needs under the "natural growth" scenario does not take into account the potential impact on inmate population growth resulting from legislation enacted in 2005. The differences between the anticipated total inmate population in the natural growth scenario and the accelerated growth scenario can also be derived from Table ES.2.

For the period 2005 to 2015, the projections indicate that the ADP (Average Daily Population) could grow as high as 8,150 bedspaces under the accelerated growth model. This represents an additional need of 3,060 beds above and beyond the projected natural growth ADP of 5,090 by 2015. Based upon full implementation of the proposed Natural Growth Phase 1 capacity expansion, an "Accelerated Growth" condition could represent a total system shortfall of 3,094 bedspaces in the year 2015 (8,150 minus 2005 CGL Operational Capacity of 3,704; minus 1,352 additional beds provided in Natural Growth Phase 1 expansion). Similarly, the accelerated growth projections for the years 2015 to 2025, totaling a potential inmate capacity requirement of 9,528 bedspaces in 2025, would result in potential additional capacity expansion requirements in the time period 2015-2025 of another 1,378 bedspaces (9,528 total projected accelerated growth ADP in 2025 minus 8,150 total projected accelerated growth ADP in 2015, assuming that whatever additional accelerated population growth between 2005 and 2015 would be addressed through additional bedspaces).

Again, from Table ES.2, the total difference between the natural growth and accelerated growth models is 3,594 beds (9,528 minus 5,934) over the twenty year planning horizon. This is demonstrated in Table ES.6 based upon the assumption that the 2,230 total bedspaces recommended under the natural growth Phases 1 and 2 model are constructed.

At this stage of planning, the assumption has been made that the State will concentrate on system expansion over the next 10 years to 2015 and during this time to determine if the recently implemented legislation impacting offenders charged with the sale of methamphetamines has the impact upon admissions that has been predicted under the accelerated growth model actually occurs. This plan also assumes that the State will recognize that in addition to 250



drug treatment beds, a need for 612 minimum/community custody beds can be justified to reduce the current dangerous levels of crowding. Both Phase 1 and 2 under the natural growth model assume that new bedspaces are achieved through additions to existing facilities and new construction (250 + 612-bedspaces in Phase 1 and 256-bedspaces in Phase 2). The sum of all natural growth bedspaces for Phases 1 and 2 (1,352 + 878) is assumed to be achieved even if the State "shifts" direction to the accelerated growth track between now and 2025.

Table ES 6: Summary of the Accelerated Growth Strategy Plan (AFTER implementation of the Natural Growth Phases 1 and 2 Plan)

	2005		Expansion		2015		Expansion		2025	
	CGL Operation Capacity				Accelerated Growth # of Inmates	Shortfall ¹			Accelerated Growth # of Inmates ²	Shortfall ²
Total - Adult Male	3,283	1,013	4,296	7,274	(2,978)	726	5,022	8,490	(3,468)	
Total - Youth Male	81	128	209	215	(6)	32	241	259	(18)	
GRAND TOTAL - MALE	3,364	1,141	4,505	7,489	(2,984)	758	5,263	8,749	(3,486)	
Total - Adult Female	340	211	551	653	(102)	120	671	770	(99)	
Total - Youth Female	-	-	-	0	(0)	-	-	9	(9)	
GRAND TOTAL - FEMALE	340	211	551	653	(110)	120	671	779	(109)	
	3,704	1,352		8,150	(3,094)			9,528	(3,594)	

Source: Carter Goble Lee, July 3, 2006

¹ Represents 2015 remaining shortfall based on the accelerated growth model AFTER completion of the proposed Phase 1 expansion plan

² Represents 2025 remaining shortfall based on the accelerated growth model AFTER completion of the proposed Phase 2 expansion plan

The strategies developed for meeting the potential additional capacity requirements generated by the accelerated growth model are presented as Accelerated Growth – Phase 1 for the years 2005 to 2015 and Accelerated Growth – Phase 2 for the years 2015 to 2025. Further, calculations for the Accelerated Growth Plan are based on the assumption of the full implementation of the Natural Growth Plan (Phases 1 and 2). This results in additional capacity requirements of up to 3,060 bedspaces for Accelerated Growth Phase 1 (8,150 minus 5,090); and 1,378 bedspaces for Accelerated Growth Phase 2 (9,528 minus 8,150).

Within the Accelerated Growth Plan, three alternative development strategies were explored to address the additional bedspace requirements potentially generated by the accelerated growth projection model, including:

- Option 1: NDCS System Initiatives – wherein NDCS would build and operate the additional bedspaces required.
- Option 2: "State Jail" Initiatives – a proposed partnership between the State and Counties of high-admitting methamphetamine offenders to develop new combination incarceration/treatment facilities for individuals sentenced under recent legislative changes.
- Option 3: Privatization Initiatives – wherein NDCS would provide the initial incarceration period, followed by transfer to treatment facilities developed and operated by the private sector.

Using these optional approaches, three separate possibilities to accommodate an Accelerated Growth Plan were defined, each including both a Phase 1 strategy to meet the potential additional inmate population growth needs through 2015, and a Phase 2 strategy to accommodate additional needs projected for the years 2015 to 2025. Each approach has been derived as an additional expansion to the capacity increase that will be achieved after full implementation of both phases of the Natural Growth Plan outlined above.

Further, each option was defined in terms of the lowest possible custody level classification possible in order to minimize the potential cost both in terms of capital construction and operating costs to the State and localities. This approach was



made on the basis that non-violent substance abuse offenders, even with relatively long sentences, can be accommodated in lower security facilities than typically associated with hard core violent criminals. In the main body of the full report, the implication of adopting any of the three implementation options outlined above is discussed. The three options range from NDCS developing and operating all future bedspaces to a "joint-venture" with counties to meet future needs to a "public-private" partnership approach. Any of the three approaches has merit, but the need for the more aggressive approach to gain additional bedspaces should be linked to a carefully monitored assessment of new admissions resulting from the new legislation on the sale of illegal substances.

Summary of the Proposed Development Strategies

Under a "Natural Growth" model, the NDCS is anticipated to grow from the July 22, 2005 population of 4,135 inmates to 5,090 inmates in 2015, and to 5,933 by 2025. While this represents a 15.8% increase (2005-2015), such an increase is manageable with the addition of 490 beds at existing institutions and 862 new beds, much of which could be minimum security or community custody. In other words, without the potential additional impact of recent legislative changes, the State should be able to financially manage the addition of bedspaces required to meet the minimum projected needs for the next ten years. Forecasting beyond a ten-year planning horizon is subject to many variables that make accurate projections difficult to produce. However, continued inmate population growth in the NDCS system is a certainty; the variance will only be a matter of the total magnitude of growth, since the "natural growth" has been relatively consistent over the last decade or more.

In addressing the "Natural Growth" scenario, phased capital construction initiatives have been proposed that closely match the projected bedspace needs by custody level and population category. The proposed capital construction initiatives also reflect taking advantage of expanding existing facilities and site locations where the opportunity to do so exists. High-security bedspace needs, for example, are accommodated by a planned expansion at TSCI by one 256-bed unit in Phase 2. Even so, the anticipated minimum amount of inmate population growth over the next ten years will require considerable capital expense and associated added operational costs.

The larger challenge for the State is the accommodation of the anticipated impact of recent legislative changes. Unless the requirement for incarceration is mediated through subsequent legislation, the potential impact on incarceration and resultant bedspace needs is the most significant of any legislation enacted to date. Two independently developed forecasting models have produced virtually the same estimate of bedspace needs resulting from the application of the new legislation regarding penalties for the sale of methamphetamines⁴.

Based upon the study completed in the summer of 2005, immediately following the passage of this legislation, a potential increase of more than 90% in bedspaces could be required by year 2015. This translates into approximately 3,500 additional new bedspaces, above and beyond what would be anticipated for normal system growth. Continuing additional growth on the order of another 1,400 bedspaces can be expected in the years from 2015 to 2025. Even using predominantly minimum security bedspaces (as anticipated), the capital and operational impact is virtually the equivalent of creating a parallel correctional system.

Recommended Operational and Capital Plan

The need for additional bedspaces was developed based upon Natural (low) and Accelerated Growth (potential additional capacity) models. Under the more modest Natural Growth scenario, the State faces investment in more than 1,000 new bedspaces by the year 2015. Under the Accelerated Growth model, the total number of new bedspaces required by year 2015 could increase to as many as 4,500 bedspaces. Continuing inmate population growth is projected for the period from 2015 to year 2025, which requires another 1,000 bedspaces for natural growth and 1,400 additional bedspaces for the

⁴ NDCS research and planning projections; and projections developed by Carter Goble Lee.



accelerated growth component. This represents significant growth in the NDCS population requiring carefully considered public policy, operational, and capital construction program initiatives in order to be as cost-effective as possible.

The Cost Model

The estimate of construction costs for the proposed new and expanded bedspaces is driven by space and the application of a unit (square footage) cost against the projected space. Initially, a square footage amount per inmate was assigned to the estimated number of inmates by custody category. As a project traverses through the budgeting process, a "soft-cost factor" should be added to the estimated construction cost to account for furniture, security equipment, architectural fees, and other capital-related costs and to arrive at an estimated project cost. For the models presented in this plan, the "soft costs" have been applied a 30% add on to construction costs. The 30% soft cost allowance should accommodate the requirements for a typical NDCS project; but does not include site acquisition costs, if required. The basis for estimating the capital and operating costs for additional bedspaces or facilities reflecting the proposed projects is presented in Table ES.7.

Table ES.7: Area, Construction, Staffing, and Operational Cost Matrix

			Construction		Staffing Ratio/Bed		Operational	
	Housing	Facility	Housing	Facility	Housing	Facility	Housing	Facility
Maximum	200	400	\$350	\$250	1: 4.5	1: 2.0	\$65,000	\$65,000
Medium	225	450	\$250	\$200	1: 8	1: 3.0	\$72,000	\$72,000
Minimum	185	350	\$175	\$150	1: 10	1: 5.0	\$85,000	\$85,000
Community	185	250	\$135	\$125	1: 12	1: 5.5	\$75,000	\$75,000
Youth	250	600	\$300	\$235	1: 3.5	1: 1.0	\$58,000	\$58,000

Source: Carter Goble Lee; September 2005

Notes:

1. Areas per bed and costs per bed based on recent Carter Goble Lee experience.
2. Construction Costs per square foot shown in this matrix; project costs factored in later.
3. Staffing Ratios computed based on current staffing in similar NDCS facilities.
4. Operational Costs include personnel costs, benefits, food, medical, and similar costs.
5. All cost estimates developed in this report are shown in 2005 dollars. Capital costs reflect construction plus a 30% soft-cost factor to derive project costs.

Natural Growth – Estimated Cost

The projects proposed for Natural Growth – Phase 1 and Phase 2 represent the least amount of capacity expansion required to meet the projected system bedspace needs. Using the cost model data presented in Table ES.4, capital construction costs and additional annual operating expenses for the proposed system capacity were estimated. Beyond additional housing capacity and new facility expansion projects, the Natural Growth capital construction program will require investment in additional administration, program, and support space at specific facility locations to accommodate Cornhusker State Industries (CSI), workshops, classrooms, and other needs. The recommended projects are based upon accommodating anticipated minimum growth within the two planning horizons, as well as returning existing facilities to rated capacity levels to alleviate serious over-crowding.

In projecting the Phase 1, Natural Growth model costs, capital needs beyond bedspaces were also addressed. These costs were provided through the Facility Engineering Section of the NDCS and were developed through requests presented by individual institution directors and verified by the Facility Engineering staff. Therefore, the costs in Table ES.8 not only reflect the capital needs associated with obtaining the additional 1,352 Phase 1 bedspaces, but other improvements that are needed between 2006 and 2015 in existing institutions.

Tables ES.8 and ES.9 present the estimated costs to implement the proposed Natural Growth Expansion Plan for existing NDCS facility expansions, as well as three new facilities to increase NDCS system capacity. The number of new beds to be constructed and the resulting changes in system capacity are also shown in these two tables.



Table ES.8: Natural Growth – Phase 1 Capacity Expansion Project Costs

NATURAL GROWTH PHASE 1: FY 2007-2016									
Project	(SF)	Cost	Constr.	(000's)	Req'd.	(000's)			
EXISTING and PROPOSED NEW FACILITIES									
FY 2007-2009									
TSCI	CSI Expansion ¹	-	-	7,600	\$ 157	\$ 1,178	\$ 1,531	2	\$ 130
TSCI	Weapons Training Facility ²	-	-	5,000	\$ 200	\$ 1,000	\$ 1,300	-	\$ -
TSCI	Additional Program/Support Space ³	-	-	4,500	\$ 160	\$ 875	\$ 878	2	\$ 130
NSP	Flood Plain Improvements ⁴	-	-	-	\$ -	\$ -	\$ 2,500	-	\$ -
NCCW	CSI Expansion ¹	-	-	4,000	\$ 167	\$ 628	\$ 816	2	\$ 130
OCC	CSI Expansion ¹	-	-	8,000	\$ 157	\$ 942	\$ 1,225	2	\$ 130
OCC	Additional Program/Support Space ⁵	-	-	18,000	\$ 200	\$ 3,800	\$ 4,880	8	\$ 380
WEC	WEC Residential Treatment Program ⁶	-	-	-	\$ -	\$ -	\$ -	-	\$ -
VARIOUS	Front Entrance Security/CCTV Project ⁷	-	-	-	\$ -	\$ -	\$ 7,860	-	\$ -
	New Substance Abuse Treatment Facility ⁸	260	360	87,600	\$ 150	\$ 13,125	\$ 17,063	50	\$ 3,250
	New Male & Female Minimum/Community Facility ⁹	812	334	204,200	\$ 160	\$ 30,630	\$ 39,819	153	\$ 9,945
Subtotal: FY 07-09		862		338,700		\$ 51,778	\$ 77,671	217	\$ 14,105
FY 2009-2011									
DEC	New High Security Intake Housing ¹⁰	128	200	25,600	\$ 350	\$ 8,980	\$ 11,848	28	\$ 1,849
NCCW/DEC	Relocate Female Reception to DEC ¹¹	-	300	8,400	\$ 200	\$ 1,680	\$ 2,184	4	\$ 288
CCCL	West Building Addition ¹²	-	-	10,000	\$ 150	\$ 1,500	\$ 1,950	4	\$ 300
DEC/LCC	New Segregation/Transition Housing Capacity ¹³	64	200	12,800	\$ 350	\$ 4,480	\$ 5,824	14	\$ 924
LCC	Additional Program/Support Space ⁵	-	200	18,800	\$ 200	\$ 3,760	\$ 4,888	8	\$ 576
Subtotal: FY 09-11		192		75,600		\$ 20,380	\$ 25,494	58	\$ 3,937
FY 2011-2013									
NSP/LCC	New Residential Treatment Facility ¹⁴	100	250	25,000	\$ 125	\$ 3,125	\$ 4,063	29	\$ 2,143
NSP/LCC	CSI Expansion ¹ (outside perimeter security)	-	-	12,000	\$ 80	\$ 960	\$ 1,248	8	\$ 520
TSCI	New 40-Bed Minimum Security Housing Unit ¹⁵	40	268	10,700	\$ 175	\$ 1,873	\$ 2,434	8	\$ 620
Subtotal: FY 11-13		140		47,700		\$ 5,958	\$ 7,745	45	\$ 3,183
FY 2013-2015									
NCYF	"Double" Facility Capacity ¹⁶	128	325	41,800	\$ 235	\$ 9,776	\$ 12,709	128	\$ 7,424
Subtotal: FY 13-15		128		41,800		\$ 9,776	\$ 12,709	128	\$ 7,424
Total Expansion								448	

Source: Carter Goble Lee, June 30, 2006

- ¹ Either a new CSI prototype Industries building or an expansion of existing CSI building.
- ² Existing Program Statement will require updating.
- ³ Additional support space required for warehouse, maintenance outside perimeter; minimal additional staffing.
- ⁴ Cost shared with City of Lincoln, NRD, and State of Nebraska.
- ⁵ Area allocation for additional visiting, dining, program space to maintain new higher rated capacity; no housing expansion.
- ⁶ Requires a Program Statement to define the capital and staffing costs for an addition.
- ⁷ Program Statement in progress for Improvements at DEC, LCC, NYCF, NSP, and OCC.
- ⁸ Designed for 125 treatment-focused inmates; expandable to 250 beds. Site must be located and Program Statement completed.
- ⁹ New minimum/community custody facility for males and females, but in separate accommodations on the campus. Site and Program Statement required. A short-term solution to relieve current and anticipated levels of overcrowding would be to renovate HCC as a permanent 250-bed facility.
- ¹⁰ New segregation housing will free up 94 medium security beds; additional program/support for those beds, including CSI, food service expansion.
- ¹¹ Relocation of female intake/classification to DEC adds 28 new general population beds; increased program & CSI space required.
- ¹² Requires Program Statement.
- ¹³ Segregation Housing to be shared by DEC/LCC.
- ¹⁴ Construct new Residential Treatment Center in the area of NSP or at area available at LCC site; higher staffing ratio due to treatment orientation.
- ¹⁵ Slightly higher area/bed used for new some program/support space for housing outside perimeter.
- ¹⁶ Higher facility area per bed driven by educational and other programmatic requirements.

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Table ES.9: Natural Growth – Phase 2 Expansion Project Costs

NATURAL GROWTH - PHASE 2: 2010-2025									
	Project			Total Area (SF)	(\$)	Constn. (000's)	Project		(000's)
DEC	Increase Double-Bunking (34 beds) ¹	-	-	-	-	-	-	6.0	\$390
NCCW	New Minimum Security Housing (120 beds)	120	185	5,180	\$176	\$907	\$1,178	12.0	\$780
NCYF	Increase Double-Bunking (32 beds) ¹	-	-	-	-	-	-	3.0	\$174
NSP	Expand Phase 1A Community-Based Facility (150 beds)	150	250	37,500	\$125	\$4,888	\$6,094	27.3	\$2,045
TSCI	Add New High Security Housing Building (256 beds)	256	200	51,200	\$350	\$17,920	\$23,286	56.9	\$3,898
Subtotal Existing Facility Projects		528		93,880		\$23,514	\$30,588	105.2	\$7,007
New Facility Initiatives									
	New Male Minimum Security Facility (512 beds)	256	350	89,600	\$150	\$13,440	\$17,472	64.0	\$4,160
Subtotal New Facility Projects		256		89,600		\$13,440	\$17,472	64.0	\$4,160
		782						169.2	

Source: Carter Goble Lee: July 3, 2006

¹ No increase in administration, program, support, or housing area; some increase in staffing.

Natural Growth – Phase 1 provides a system capacity expansion of 1,322 bedspaces to meet 2015 needs, for an estimated total project cost of \$87.9 million dollars and an estimated additional annual operational expenditure of \$28.6 million. Natural Growth Phase 2 provides additional system capacity of 782 new bedspaces after 2015 to meet 2025 needs for an estimated total project cost of \$48.0 million dollars and an estimated additional annual operational expenditure of \$11.2 million. In total, the 20-year capital plan estimates a need for an investment of \$136 million to meet the projected natural growth needs. The average capital cost per bed is \$82,000 and \$18,700 for operational costs for both phases calculated in 2006 dollars.

As far as new construction for high-security inmates, a total of 32 high-security bedspaces are generated at TSCI by adding a minimum security unit for the trustees, and using the existing trustee unit for higher security inmates. Another 256 high-security beds are generated through construction of one new housing unit at TSCI, for a grand total of 288 additional high-security beds. This expansion is expected to provide sufficient high-security beds under either growth model through 2015 (Phase 1), and under the Natural Growth Model through 2025 (Phase 2).

Accelerated Growth – Estimated Cost

Estimating costs for the Accelerated Growth model should be based on one of three options to provide capacity above and beyond that provided for in the Natural Growth scenario. As noted earlier, and discussed in greater detail in Chapter 4, three approaches were considered. The first (Option 1) includes the NDCS developing and operating an additional 1,800 incarceration bedspaces with subsequent release to Community Corrections. Option 2 suggests a plan under which the State and local jurisdictions jointly develop facilities. Option 3 includes contracting out the design, construction, finance, and operation of new treatment-based facilities.

These options are intended to reflect various approaches that the State could consider in meeting the potential bedspace shortfall resulting from the implementation of recent drug-related legislation. In all three options, system expansion projects included as Natural Growth – Phase 1 additional beds would be required as this reflects the "natural growth" that is predicted to occur, regardless of the additional impact of recent legislative initiatives.

The three options discussed for Accelerated Growth – Phase 1 are based on meeting the total potential system capacity requirements for the year 2015. As stated, in each case, the proposed Natural Growth – Phase 1 projects need to be accomplished, plus either Option 1, 2, or 3, in a series of initiatives by that point in time.



Accelerated Growth – Option 1 is the least expensive of the Accelerated Growth solutions, due to the strategy of NDCS providing only one year of incarceration in a "regular" facility, for methamphetamine commitments, followed by assignment to intensive Community Corrections. The likely cost of intensive supervision in the community would range from \$10 to \$15 dollars per offender per day. At \$12/day, this translates to an additional \$6.0 million annual operating cost, which has been included in Accelerated Growth – Option 1.

Year 2015 to 2025 Needs

Option 1 remains the least expensive Accelerated Growth strategy, since "non-facility" solutions are used to meet the need for community sanctions, even when the likely cost of intensive supervision in the community at \$12/day (an additional \$6.0 million annual operating cost) is included in Accelerated Growth – Option 1.

The comparative costs to implement the Natural Growth Plan and of each of the three development options, representing total initiatives required for both Phase 1 (year 2015) and Phase 2 (2025) are summarized in Table ES.10.

Table ES.10: Comparison of Estimated Cost between the Natural and Accelerated Growth Models

Summary of Expansion Plan		Community Supervision		State/County		OPTION 3:	
		Natural Growth				Accelerated Growth	Difference vs. Natural Growth
Phase 1: 2005-2015							
Number of Constructed Beds	1,322	2,902	1,580	4,502	3,180	4,802	3,280
Estimated Project Costs	\$ 124,818,300	\$ 211,573,050	\$ 86,954,750	\$ 272,413,050	\$ 147,794,750	\$ 211,573,050	\$ 86,954,750
Additional Annual Operating Costs	\$ 28,849,160	\$ 52,526,569	\$ 23,877,398	\$ 70,655,160	\$ 42,006,970	\$ 90,408,349	\$ 61,759,158
Phase 2: 2015-2025							
Number of Beds	782	1,824	1,042	2,494	1,712	2,504	1,722
Estimated Project Costs	\$ 48,040,200	\$ 116,476,750	\$ 68,436,550	\$ 142,314,250	\$ 94,274,050	\$ 116,476,750	\$ 68,436,550
Additional Annual Operating Costs	\$ 11,247,232	\$ 31,833,232	\$ 20,586,000	\$ 32,783,232	\$ 21,538,000	\$ 43,515,938	\$ 32,268,704
Total Expansion Through 2025							
Number of Beds	2,104	4,726	2,622	6,996	4,892	7,108	5,002
Estimated Project Costs	\$ 172,858,500	\$ 328,049,800	\$ 155,391,300	\$ 414,727,300	\$ 242,066,800	\$ 328,049,800	\$ 155,391,300
Additional Annual Operating Costs	\$ 39,996,423	\$ 84,359,821	\$ 44,463,398	\$ 103,438,392	\$ 63,541,970	\$ 133,924,285	\$ 94,027,862

Source: Carter Goble Lee, July 3, 2006

Conclusion

The purpose of this plan is to update previous studies in light of system and legislative changes and to model the possible implications of the public policies and behavior that influence incarceration. Without question, the use and abuse of methamphetamines in the United States is reaching epidemic levels amongst segments of the population. While these addicts are not typically violent, the abuse defies many of the traditional treatment models, and incarceration alone has shown to have virtually no impact upon curing the addiction beyond the obvious period of incarceration. Therefore, in conjunction with the determination of facility needs for methamphetamine addicts, the State must address a comprehensive approach to a continuum of care model that follows the released offender back to the community where sustainable solutions reside.

Secondly, the NDCS has embarked upon a "sea change" relative to the method used to classify inmates that ultimately may reduce the demand for higher custody bedspaces but increase the need for minimum custody bedspaces. Fortunately, resulting from the outcomes of the 1997 Master Plan, the State has an adequate supply of high custody

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bedspaces that should last for more than a decade. The immediate need is to provide minimum custody bedspaces to take advantage of the change in classification levels and to focus on rehabilitation of these offenders, and especially those with histories of substance treatment abuse. Even if a new commitment to community-based alternatives "takes root", a period of incarceration in a minimum custody, treatment-focused environment may be critical to the success of any expansion of community-based alternatives.

Lastly, incarceration rates in Nebraska, while remaining far behind those of the East and West coast states, are certainly on the rise. In the 1992 Master Plan, the average daily population was less than 2,000. On May 2, 2006, the population was 4,420. In less than 15 years, the population has more than doubled. During the development of the 1997 Master Plan, the leadership of NDCS proposed that 125% of capacity would be a manageable level of crowding on a short-term basis. Today, the system is straining to accommodate 140% of capacity, and climbing. The 2006 Master Plan recommends 862 new bedspaces immediately that, if available today, would mean that the system was operating at 97% of a new recommended operating capacity that is higher than currently used.

Clearly, the State cannot expect to accommodate the level of growth expected even under the Natural Growth Model without a significant expansion of bedspaces. For the past 10 years, the ADP has increased, on average, 135 inmates per year. Simple math indicates that if the 862 FY 07-09 bedspaces recommended in this plan are not occupied until 2009, the population will have increased by at least another 300 prisoners to be added to the 700 that currently exceed the new recommended "operational capacity" of 3,704. The need for funding the Phase 1 plan is apparent. The State, unfortunately, does not have a history of funding alternatives to incarceration, but even if this trend was reversed overnight, the current facilities are well beyond the ability to offer reasonable conditions of confinement, much less treatment-focused incarceration.

Although expensive and often inadequate solutions, temporary housing may be necessary to maintain good order within existing facilities while the recommended new bedspaces are designed, constructed, and located. The State has a history of implementing the master plans that NDCS develops. Implementation of the 2006 Master Plan, hopefully, will not be an exception.

7246



Robin Spindler/dcs/NEBRLN
07/25/2006 11:16 AM

To Bob Houston/dcs/NEBRLN, Doug Hanson/dcs/NEBRLN,
cc
bcc
Subject charges to Carber Goble Report

Listed below is the summary of changes for the Carter Goble report. Please review to make sure I got everything, and then I'll forward to Steve. Also, after our review, we can also forward to Robert Bell so that he knows what changes we're recommending.

- ✓ ES 7: 1st paragraph - last sentence
 - add 'if community options do not keep pace' so that the sentence reads: Clearly, capacity expansion initiatives are needed as soon as possible if community options do not keep pace to maintain safe and human conditions within the system...
- ✓ ES 7: under housing section - delete last sentence of first paragraph
 - delete: Since medium custody inmates comprise the majority.... to inpatient treatment.
- ✓ ES 8: last paragraph
 - delete first sentence: A recent study estimated that.... abuse treatment.
- ✓ ES 8: Program section - 2nd paragraph, 2nd sentence
 - add 'in industries program' -- so that reads: Nebraska is already ahead of many other states, with close to 15% of all inmates employed in industries programs.
- ✓ ES 13: Option 2:
 - change wording so that the strategy is a regional jail model
- ✓ ES 14: paragraph at top of page
 - change wording in the sentence beginning with "The three options frange from NDCS developing...." so that it replaces the 'joint-venture with counties' to the regional mall model language.
- ✓ ES 14: under summary section
 - 2nd paragraph - last sentence; add to the end of the sentence: unless community options diminish or delay construction.
 - 4th paragraph: delete entire paragraph except for the 3rd sentence (Continuing additional growth on....to 2025.) Move that sentence to the end of the 2nd paragraph.
- ✓ ES 19: 3rd paragraph
 - delete the laste sentence: The need for funding...much less treatment-focused incarceration.
- ✓ ES 19: 4th paragraph
 - delete 2nd and 3rd sentences: The state has a history.... and Implementation of the 2006 Master plan...

Robin Spindler
Deputy Director - Admn Services
(402) 479-5711 (w)
(402) 479-5623 (fax)
(479-5712) - Admn Asst.



Robin Spindler/dcs/NEBRLN
07/25/2006 11:16 AM

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Governor Binder 4

-Corrections to handle

GOVERNORS OFFICE

3381

F. J. J. 127300 APR 28 2009

RECEIVED

1 Dear

GOV. Dave Heineman

Im writing in regards to the story written in the omaha world-Herald about the 140% over population problem in state prisons here in Nebraska. I am currently being held in the Tecumseh state correctional instatuation and I'd like to bring to your attention the real way the prison deals with their population the SMU unit is the biggest unit here at Tecumseh they place inmates in the hole with no misconduct reports for a rule infraction and leave these inmates here in SMU for a months to 1 year and all they say their reason is for AC for the safety and good order of the prison when most of the inmates show no violent behavior or the write up MR gets dismissed in the instatutions court and yet the inmate is not released back onto the prison yard the only purpose for this unfair treatment is souly population controle I ask

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2. you to please investigate this problem
Sir because 23 hour a day lock down
causes mental illnesses that have
to be placed back into society and
the inmates aren't given any kind
of programing in SMU no types of
rehabilitation treatment I truely
believe this way of cageing inmates
with no reason or pupose only to
make bed space on the yard is
fueling the crime rate in North
Omaha were I come from and th.
mental health in the hawl prison
is under staffed greatly and I
myself have grown illnesses mentally
from this same treatment witch I
am working on geting to a mental
health mod to better myself and
my problems this was written on
behalf of all the inmates who are
not educated enough to express them
selfs respectfully just pull records
of why inmates are in the ~~SMU~~ do
they have MR write ups for it a
how mental health staff are under
staffed and most of all see how

3 long inmates are held with no type of programing offered at all this place in Tecumseh is a breeding ground for violent crime criminals who develop a hatred for society based on mistreatment in the living and eating conditions and do not misunderstand my acknowledgement of fact as an excuse for my actions or the actions of other inmates everyone broke the law to get here so we dont deserve to be comfortable and yet we do not deserve to be caged as animals for no good reason because once you cage someone so long he or she will become that one day thank you for your time I truly hope something is done about this because this problem effects society and generations to come.

~~NIKKO~~ (Truthfully Written)

NIKKO A Jenkins 59478

STATE OF NEBRASKA

DEPARTMENT OF CORRECTIONAL SERVICES

Robert P. Houston

Director



Dave Heineman
Governor

May 8, 2009

Nikko Jenkins #59478
Tecumseh State Correctional Institution
P.O. Box 900
Tecumseh, NE 68450

Dear Mr. Jenkins:

Governor Dave Heineman received your correspondence on April 28, 2009, regarding your placement in segregation at the Tecumseh State Correctional Institution. The Governor has forwarded your letter to my office and requested that I respond on his behalf. Please note he will receive a copy of this reply.

Inmates in segregation at the Tecumseh State Correctional Institution are housed there for the safety and security of both inmates and staff. You were placed on Administrative Confinement on February 13, 2009, for a weapon that was recovered from you during a search. On January 26, 2009, staff conducted a search and found a manufactured weapon concealed in the waste band of your state issued khaki pants. The weapon retrieved was approximately five to six inches long and was a piece of toilet brush sharpened to a point. This is a threat to the safety and security of the institution. Therefore, your continued placement in segregation is appropriate. Your Administrative Confinement status will be reviewed on or before November 8, 2009.

One of the goals of the Special Management Unit (SMU) is to safely manage disruptive and violent inmates. In order to achieve this goal, several outlets are available for inmates to utilize in order to improve their behavior and focus on transition into general population. Mental health staff review each inmate's segregation status monthly and are available to address issues raised by inmates. The childhood issues you raise would be a topic you should speak to mental health staff about. The Levels Program was implemented in SMU to promote positive behavior among segregation inmates. The program encourages motivation for change and enhances quality of life by reducing self-defeating behaviors.

Inmates in SMU may phone, write and receive visits from their friends and family if approved. You also have access to religious materials. Although these opportunities may not be seen as traditional programs, they provide the opportunity for you to improve yourself.

Sincerely,


Robert Houston
Director

cc: Governor Dave Heineman
Fred Britten, Warden, Tecumseh State Correctional Institution